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ABSTRACT

This training manual provides materials for conducting a workshop on problem solving and creating good agreements in special education. The first section of the manual provides a brief introduction to the world of special education and discusses why special education law is complex. Section 2 explores why conflict is created, seven types of conflict, and the three most common responses to conflict. The following section focuses on preparation for problem solving. Techniques are provided for dealing with difficult people and becoming an effective problem solver. Section 4 highlights critical communication skills and discusses barriers to effective communication. Section 5 provides steps in the process of collaborative problem solving, including sharing perspectives, defining the issues, identifying the interests, generating options, deciding on objective criteria, and evaluating options and reaching agreement. The next section focuses on strategies for success in dispute resolution. It provides solutions for common problems, including defusing resistance, refocusing the discussion or reframing the issues, dealing with emotional baggage, and educating. Section 7 discusses dispute resolution processes in special education, including mediation, complaint investigation, due process hearings, independent educational evaluations, fact finding, and arbitration. The final section contains suggested reading, definitions, and acronyms. (Contains 23 references.) (CR)

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COLLABORATIVE PROBLEM SOLVING AND DISPUTE RESOLUTION IN SPECIAL EDUCATION

TRAINING MANUAL

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Forward for Workshop Participants

The purpose of this workshop is to expand the skills and techniques in our personal 'toolboxes' for problem solving and creating good agreements. Throughout this workshop we will share a range of useful strategies which can help us respond to conflict with confidence and competence.

This training manual covers roughly the same material as the workshop. However, some aspects are dealt with more thoroughly in the training manual, and some will be emphasized in the hands-on aspects of the workshop.

Accordingly, we recommend that you might want to consider taking this training 'twice'. For the first training, you attend the workshop and complete the exercises. The second time, you read the entire training manual, at your leisure, at home. You may find that this helps to solidify the concepts presented in the workshop and enhances your overall learning experience.

We are dedicated to making our workshops, training and materials the best they can be. We welcome your feedback, critique and, of course, compliments. Engage your mind and enjoy.

------Suzanne and Rod

COLLABORATIVE PROBLEM SOLVING AND DISPUTE RESOLUTION IN SPECIAL EDUCATION

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Section 1:

SPECIAL EDUCATION AND THE LAW

IN THIS SECTION YOU WILL FIND:

- A BRIEF INTRODUCTION TO THE WORLD OF SPECIAL EDUCATION
- A DEFINITION OF *FAPE* AND *IDEA*
- WHY SPECIAL EDUCATION LAWS ARE COMPLEX
- SPECIAL EDUCATION, TRUST, AND GOOD AGREEMENTS

A BRIEF INTRODUCTION TO THE WORLD OF SPECIAL EDUCATION

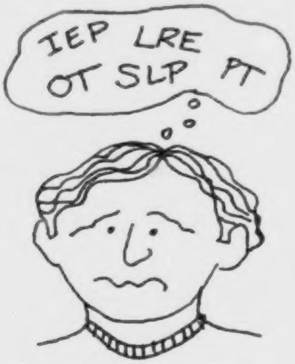
Since it's beginning in 1975 as Public Law 94-142, special education law has emerged as one of the main protectors of the rights of children with disabilities in America.

This law was created in response to complaints that children with disabilities were receiving an inferior education, often in isolation from nondisabled children.

FAPE AND *IDEA*

In 1997, the special education law was updated and is now known as the Individuals with Disabilities Education Act (IDEA-97). As before, the purpose of the law is to protect the rights of children with disabilities, and make sure that they receive a *Free, Appropriate Public Education (FAPE). Free* means that there can be no cost to the parents, and *appropriate* means that the children get what they need to learn in spite of their disabilities.

Special Education uses lots of acronyms. In section 8, we include a list of current special education definitions and acronyms for reference.



WHY SPECIAL EDUCATION LAW IS COMPLEX

Special Education is, and always has been, a complex, law-driven process. It is a world with its own language full of required forms, required meetings and required participants at those meetings. It has timelines which must be met, categories of disability that students must be 'fit into', and precise definitions of key words and phrases (see section 8).

One may well wonder why it is that so much regulation and legislation would be required for students with special needs. After all, children naturally want to learn, and parents want their children to learn as much as they can and get along well with others. This is exactly what schools were created to do.

Teachers are individuals who care deeply about children and about society in general, and who have chosen a career dedicated to helping young ones learn all they can and grow up successfully. Therefore, it seems obvious that parents and teachers have the same ultimate goal: the success of their students. If there are disagreements, why can't parents and teachers just sit down and figure out what's best for the child?

One answer is that it's not always so easy to just sit down and figure out what's "best". Teachers and parents can have honest disagreements about how to educate a child. A school may have the overall goal of serving all students equally with their available resources. Parents may have the goal of getting the best education possible for their children even if it is more expensive than normal. Educating special needs children is a multi-faceted, often complicated process which is rife with possibilities for disagreements. Parents and teachers can both become very emotional about a child's education. After all, it is true for all of us that our children are our future. Educating children is a high stakes enterprise.

A second answer has to do with the issues of trust and communication. The more we trust someone, the less formal and detailed our agreements need to be. We simply trust that the plan will be carried out, and we trust that our ability to communicate with the other party will resolve any differences.

However, the special education laws could not be written relying on trust. They were written to cover every detail and imagine every contingency. We may regularly complain about the detail, complexity and paperwork the law requires, but in fact the law is very carefully designed to respond to important concerns and issues.

SPECIAL EDUCATION, TRUST, AND GOOD AGREEMENTS

The law does not have to be intimidating or overwhelming. If we can communicate well and trust each other, we can create agreements for educating our children *in spite of* the complexity of the law. What's best for the child *can* always drive our decisions, rather than a simple adherence to 'what the law says we should do'. We will find that when we make decisions in this manner, we will be able to fit our educational recommendations into the framework of special education law. Our ability to be successful in building this kind of trust will stem largely from our skill as dispute resolvers, problem solvers and communicators, as well as from our commitment to responsibly carry out what we agree to do.

Section 2:

CONFLICT 101

IN THIS SECTION YOU WILL FIND:

- HOW CONFLICT IS CREATED
- WHY CONFLICT IS UNPLEASANT FOR US
- BEGINNING TO LOOK AT CONFLICT IN A NEW WAY
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HOW CONFLICT IS CREATED

It is useful to understand how conflict starts and is carried on. (We'll speak here in terms of just two 'parties' in order to keep things simple.)

Conflict occurs when one party decides that the way things are is not okay and seeks change, but that change is not agreed to by the other party. It is important to realize that despite the old saying that "it takes two to tangle", in reality it only takes one party to declare a conflict. At that point, the other party is drawn into the conflict whether they want to be or not, *unless they have the option to leave the relationship.* In a public school situation, neither the parent nor the school can 'leave', unless the parent pulls the child from the school system entirely.

It only takes one party to initiate a conflict.

Whether a conflict remains unresolved, is resolved with good feelings on all sides, or becomes a protracted legal dispute with high emotional and financial cost depends primarily upon the skill the parties have as dispute resolvers.

WHY CONFLICT IS UNPLEASANT FOR US

Our society's prevailing view of conflict is brought into sharp focus with this definition from Webster's New World Dictionary:

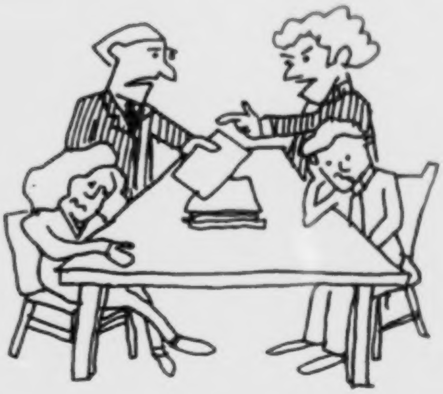
Conflict

1. to fight, battle, contend
2. to be antagonistic, incompatible or contradictory, be in opposition, clash
3. sharp disagreement or opposition as of interests, ideas, etc.
4. emotional disturbance resulting from a clash of opposing impulses

The preceding definition makes it sound like a root canal would be preferable to any sort of conflict. Truthfully, conflict is stressful and unpleasant for a majority of people. One of the main reasons this is so is that most of us are not confident of our ability to successfully resolve disputes.

Sometimes, we may 'pave over' the conflict with superficial gestures or social masking. Another common strategy is blaming, talking or complaining about the situation with friends or third parties (while failing to talk directly to the other party we are in disagreement with). This may give some emotional venting or relief but rarely solves the problem, especially when our friends agree with our view and reinforce our necessarily one-sided perspective.

If we perceive the conflict as truly serious, we may contract with lawyers as our 'hired guns' to deal with our problems. We use lawyers because the complexity of the law is so intimidating, and also so we do not have to confront the issues or the people involved directly. However, this 'third party' approach has some definite liabilities, which include a high monetary cost, a loss of personal control over the outcome, and a winner/loser scenario that can provide the basis for future conflict.



BEGINNING TO LOOK AT CONFLICT IN A NEW WAY

Despite all of its negative aspects, conflict and disagreement between people has its good side. Conflict is actually the main vehicle through which change takes place in our society. When we disagree, it helps us sharpen our focus and define what the important issues are for us. Suppression of conflict and dissent is a sure sign that freedom is on the decline and democracy is in trouble. Seen from this point of view, conflict is both evolutionary and absolutely necessary.

Unless we have reached a utopian society, there will always be conflict, as there will always be disagreement about what is fair and best for all of us. If we accept the inevitability of conflict, it becomes obvious that it is in our best interest to gain the skills to be successful dispute resolvers.

It can be useful to begin to think about conflict as potentially beneficial in the long term: normal, natural and something to engage, not avoid. It will be easiest to make this kind of a shift in attitude if we have good skills to resolve conflict. We naturally tend to be attracted to those things we do well and shy away from those we are not so good at. Therefore, if we want to gain a more positive attitude about conflict when it appears, we will want to expand our skills to resolve conflict effectively.

Depending upon the range and quality of our dispute resolution toolbox, dealing with disagreement does not have to be disagreeable. Successfully resolving a conflict can actually be an enjoyable and empowering experience. Becoming more skilled in resolving disputes and solving problems can also help us to understand the workings of the human mind in relationships, which can lead to better relationships overall. This is not to say that problem solving is always fun or easy; in fact, many times it is hard work. The rewards, however, usually are worth it.

HOUSE OF CONFLICT
TOOLBOX

> *"If you want to make quantum improvements, either as an individual or as an organization, change your frame of reference. Change how you see the world...change your paradigm, your scheme for understanding and explaining certain aspects of reality."*
>
> -Steven Covey

Working Together

In special education, parents and teachers often work even more closely together than with a regular education student. A special education child may have more difficulty than a regular education child in 'fitting in', especially in today's school climate of 'educational reform' with the emphasis on achievement, high-stakes tests, and certificates of mastery. With all of this pressure to perform, it's all too easy for parents and teachers to get stressed and fall into conflict.

When we do have a school-based conflict, it's almost always desirable to avoid a win/lose outcome, because we are going to have to continue to work together in the best interests of the child. The relationship between parents and school is ongoing; it continues long after the conflict is over. The last thing we need is for one to feel like a 'winner' and the other a 'loser'.

Parent and teacher are the two centers of almost every child's universe. No one knows their child better than the parents. No one knows how to teach better than the teacher. It is a centered child who finds that his/her universes are in harmony with each other. The consistency breeds safety, which allows growth.

***Lessons from geese*: when geese fly in a 'v' formation as a group, each bird is lifted by the one before it. The whole flock is able to fly 71% further than if each bird flew alone.**

LOOKING MORE CLOSELY AT CONFLICT: AVOIDING FEAR

Any conflict can give rise to feelings which may manifest as physical or mental anxiety about a situation. At the root of these feelings is fear. A wise teacher once said, "If you're afraid of something, become interested in it!".

"If you are afraid of something, become interested in it!"

Looking with "interest" at conflict, we see that the root causes of conflicts can be broken down into fairly clear and distinct categories. Solutions usually must take into account the underlying type of conflict.

SEVEN TYPES OF CONFLICT

A preliminary step in resolving conflict is to understand what the conflict is actually about. Having a clear picture of what the issues are reduces the chance of a mismatch between the problem and the solution. In this section, we identify conflicts according to their core elements. Seven main types of conflict are discussed below: data conflicts, relationship conflicts, conflicts over values, conflicts regarding resources, conflicts about past history, conflicts about structure, and psychological conflicts.

Conflicts can be complex, and they may not always be about what they seem. For example, a disagreement that seems to be about data may actually have elements of relationship or values embedded within it. It's necessary to observe carefully to determine the true combination of elements that are involved.

Most conflicts will have one or more of these elements as 'root causes'. Generally, a solution to conflict will match the cause.

- DATA conflicts will have DATA SOLUTIONS
- RELATIONSHIP conflicts will have RELATIONSHIP SOLUTIONS
- VALUES conflicts will have VALUES-BASED solutions
- RESOURCES conflicts will have solutions that address RESOURCES
- conflicts generated by past HISTORY must address that HISTORY
- conflicts about the underlying STRUCTURE of a situation must deal with that STRUCTURE
- PSYCHOLOGICAL elements which cause problems in resolving issues must be dealt with creatively and must address the underlying PSYCHOLOGICAL needs.

Data

There are conflicts which exist primarily over data or facts. Most data conflicts have data or factual solutions, either through obtaining more information or through new data collection.

Example: Mother is convinced that her daughter can learn to read on grade level and accuses the school district of failing to provide appropriate instruction. However, two separate ability tests given several years ago place her daughter's IQ between the 2nd and 5th %ile, leading school personnel to believe that grade level performance is most likely unrealistic. Mother believes, for a number of reasons, that the test results are invalid.

Discussion: Some methods of using 'data' to help resolve the issue could include providing more information regarding the relationship of IQ to reading achievement, re-doing the ability test to meet mother's concerns about test validity, or devising a data-driven reading instructional plan and reading assessment strategy that everyone can agree on.

Relationship

Conflicts can arise over a relationship, or over a communication style.

Example: Father is upset because he believes that the special education teacher is not following up sufficiently on his child. He states that an agreement to provide weekly feedback regarding progress has not been reliably kept. Finally, he feels that the special education teacher is condescending and diffident in her dealings with him, often failing to return his phone calls the same day.

Discussion: Educational relationships can often be improved by clearly stating needs, developing clear expectations, and writing agreements down for the parties to follow. Many times people are unaware of how they come across to others. "You can't change if you aren't told what's wrong!"

Values

Conflicts can occur over values, where the parties have perceived or actual incompatibilities in their belief systems.

Example: Mary's teacher feels that Mary, a third grader, gains valuable social skills and modeling when she participates in problem-solving class meetings. Mary's mother feels that school is a time that Mary should be learning her math facts, particularly since she is behind. She wants Mary pulled out for individualized math instruction during class meeting time.

Discussion: Our values help us define what is 'right' or 'wrong' in any situation, and provide a moral compass for our lives. Different values do not need to cause conflict; people can live together in harmony with different value systems. The keys to successful resolution are improvement and expansion of tolerance, understanding, and acceptance of others' points of view.

Resources

Conflicts often occur over real or perceived scarcity of resources:

Example: Beth is a student who requires assistive technology in order to communicate. Her parents feel strongly that she needs the latest in voice-generating computer technology in order to maximize progress on her IEP. This technology costs over $10,000. The school district feels that Beth's IEP goals can be met by utilizing existing technology at a much lower cost.

Discussion: A key concept useful to work with when scarce resources are at stake is that of 'expanding the pie'. Expanding the pie involves brainstorming ways to use existing resources more effectively. Perhaps the technology can be leased instead of bought; perhaps it can be shared. The possible solutions are limited only by the flexibility and creativity of those involved.

History

Conflicts occasionally result from a history of slights or 'bad blood' between parents and schools. Sometimes the core of these conflicts goes clear back to when those parents were students themselves.

Example: John, a parent, has a great deal of difficulty communicating with the school, particularly when his child is in trouble. He comes to meetings stiffly, with his arms folded, and says little. Privately, he blames the school for picking on his child. John went to this school as a child and remembers his experience in mostly negative terms.

Discussion: In such cases, it's most important to communicate person to person, to allow the person carrying the 'history' a chance to vent and tell his story, to stay away from evoking 'rules' as justification for decisions, and to ultimately allow a new perspective to emerge overtime.
It's important to remember that histories weren't created overnight and usually won't be resolved overnight. Building trust takes time.

Structural

Conflicts can occur over how to deal with structural realities which exist outside the immediate world of the parent/school but which are having an impact on them.

Example: Vicki is a child with medical/emotional issues that sometimes require her mother's attention. School is not going well and frustration is mounting because mother must work and cannot come to school when she is needed and when she would like to.

Discussion: It can be helpful to assist those involved with this type of problem to appreciate the external forces and constraints bearing upon them. Their appreciation that a conflict has an external source can have the effect of everyone coming together to jointly address the imposed difficulties. Structural conflicts will often have structural solutions.

Psychological

Conflicts can be caused or maintained by the psychological needs of humans: the desire for power, control, autonomy, recognition or love.

Discussion: These conflicts are often difficult to identify and it is important that dispute resolvers not engage in excessive psychoanalyzing of others. Still, there are times when these basic human tendencies and drives will be contributing to a conflict, often masquerading as some other, more tangible issue. Few people are going to be able to come out and say "I'm in this conflict with you because you're not giving me enough recognition." Sometimes it is wisest to not deal with these issues directly; people hate to feel as if they are being 'analyzed'. If you become aware of these issues, it may be useful to search for a viable solution that will help some of these needs to actually be met, and will thereby reduce the need to create more conflict.

CONFLICT IN THE ANCIENT WORLD

If we have an understanding of how humans have been evolutionarily programmed to respond to conflict, we are better able to understand how this 'programming' influences our physiological and psychological responses of today and influences how we deal with others to solve problems.

In times long past, conflict was likely to have life or death consequences. Whether under attack from a marauding tribe or being stalked by a saber-toothed tiger, our ancestors had to be constantly ready for action in order to survive. When faced with a perceived threat, these humans of old responded immediately and automatically with a 'package' of hormonal output designed to enhance survival. At the first sign of danger, signals from the amygdala (located deep within the 'emotional brain'), triggered the release of epinephrine and norepinephrine from the adrenal glands. This immediately raised the heartrate, elevated breathing, and diverted blood flow from the stomach and the areas near the skin into the large muscle groups. The body was ready to do what it took to live: fight, or if necessary, flee. Of course, there were also times when fighting or fleeing was useless, and the best alternative was to play dead. Playing dead at least gave the ancient one a chance to survive.

Three Hardwired Ancient Responses:

1. **Fight**
2. **Flee**
3. **Play Dead**

FIGHT

FLEE

PLAY DEAD

CONFLICT IN THE MODERN WORLD

The rapid pace of change in our society over the last few hundred years has far outstripped the human body's natural evolutionary change rate. As a result, we find that even as we live in today's world, the ancient physiological survival mechanisms are alive and well inside each of us. However, it is rare to have to confront threats to our lives in our school buildings (although the recent school shootings have led to a general increase in fear and insecurity).

These days, the type of threats we usually experience in school settings are not physical threats but psychological ones. There are threats to our self-esteem, threats to relationships we value, and threats to our success. Many people also experience a sense of threat when they encounter conflict or a problem that seems unsolvable.

From the point of view of the emotional brain, these psychological threats are considered identical to physical threats. At the first sign of trouble the amygdala kicks in and triggers the same ancient packet of survival hormones and chemicals. Our cheeks may flush, heartrate increases, palms become cold and sweaty. We experience a classic 'stress' response and we are ready for action!

However, adults today don't usually resolve conflicts in schools by a punch in the nose (as much as we might sometimes want to!). It also is not considered a proper response to run away down the street, and we certainly can't play dead. Like it or not, we have had to adapt to the 'civility' of the workplace. The adaptations we have made, still based on ancient responses, have led to common styles of resolving conflict that we observe in society today.

Understanding these styles can help us see what skills and strategies we may already have, as well as begin to think about additional learning that can help round out our dispute resolution toolboxes.

THE THREE MOST COMMON RESPONSES TO CONFLICT

When faced with a conflict, people most commonly employ one or a combination of three basic response styles. These responses have parallels with the survival tactics of earlier humans: a *fighting* response which mirrors the ancient fight response; an *avoiding* response which is a variant of the flight response, and the *acquiescing* response which resolves conflict by choosing to give in to the other's demands, i.e. by 'playing dead'. In real life, most people tend to have one main response style but may react with any variant of these, depending upon the situation, the timing, and their mood.

Each of these three responses to conflict has it's appropriate time and place, and is not necessarily good or bad.

Rather than judging a particular response, the question we might want to ask is this: "Does what we are doing represent the best approach we can use right now in order to most successfully solve the problem at hand?"

Does what we are doing represent the best approach we can use right now in order to most successfully solve the problem at hand?

Fighting

A FIGHTING response is to take sides, become caught up in the emotional energy surrounding the dispute, and perhaps get 'hot' under the collar. A person in FIGHTING mode identifies what they believe is the 'right side' in the dispute. People FIGHTING are generally in touch with their own feelings, and the feelings of all those on their side of the dispute. The one-sidedness of their emotional involvement means that the FIGHTER'S ability to clearly see the perspective of the other side is limited, since they are convinced that their side is right. People in a FIGHTING mode tend to see the world in black and white terms: there is a right side and a wrong side, and they, of course, are on the right side.

A FIGHTING response may be the most appropriate when there is a legal point which must be decided, when a crucial moral issue is at stake, or when having a clear winner and loser will not cause long-term damage to an ongoing relationship.

Avoiding

People engaging in an AVOIDING strategy protect themselves from the difficulty of conflict by putting up a mental wall. Even though they want to win, they are reluctant to jump into conflict the way someone with a FIGHTING response would. A common thought pattern of someone avoiding might go like this: "I don't want to deal with this. Maybe if I do nothing about it it will go away". People may also use various forms of social propriety to keep away from conflict, i.e. "nice people don't fight".

AVOIDING means dealing with the conflict from a safe emotional distance. As with viewing a distant mountain range, however, specific details get lost the farther away one is. Emotional distancing as part of avoiding may mean that there is difficulty in empathizing, in 'putting on another's shoes'.

A strategy of AVOIDING may be useful when it's important to give some time and space to a conflict. In the short term, timing can be extremely important in determining when a problem is brought up or a conflict is discussed. People are mood driven, and a day (or even a few hours) can make a tremendous difference in their willingness to engage productively.

In the longer term, it is also true to say that "time heals *some* wounds". A conflict *may* go away over time, particularly if there is continued contact between the sides on other issues and that contact is mostly positive and productive. At a certain point, both parties may decide that what they were upset about in the past is just not important anymore.

Acquiescing

A person who is responding with a response style of ACQUIESCING simply gives in. Faced with a fight, they drop their demands and let the other party have what they want. A person who finds fighting morally wrong may adopt an ACQUIESCING strategy to avoid conflict. More commonly, however, people simply say to themselves "It's just not worth the fight". Sometimes, however, as they later review what they have given up, they may feel used, abused, manipulated and angry...thereby sowing the seeds of future conflict.

Sometimes, an ACQUIESCING approach to problems results from genuine generosity brought about by an ability to empathize with what the other party wants. In such cases satisfaction comes from giving to another, rather than from getting what one wants.

Sometimes, also, an action with regard to a conflict that looks like weakness (e.g. 'giving in') may actually be strength. Perhaps the person has seen the big picture and is prepared to lose the battle in order to win the war.

a FIGHTING response **engages the other side in battle.**

an AVOIDING response declines to engage with the other side, but tries to win indirectly.

an ACQUIESICING response gives in to the other side.

EXPANDING OUR COMPETENCE IN PROBLEM SOLVING

People generally resolve conflict using what skills they have learned and are most comfortable with. Just as with parenting, many of us have had no formal instruction, and we go on the basis of what has been modeled for us in the past. This means that most of our learning about how to resolve conflict has taken place through experiencing one or more of the three common problem solving styles.

However, there are methods of resolving conflict which are inherently different from any of the three common responses we have discussed to this point. There are strategies available for dealing with problems that do not involve responding with fighting, avoiding and/or acquiescing responses. These methods, collectively referred to as win-win or collaborative, can hold promise when the other responses aren't working as well as we would like.

Though much of our focus here is on collaborative problem solving, it's good to remember that the three common approaches also have their time and place (and are quite widely used!). Ultimately, in evaluating the appropriateness of any approach, we will always want to ask ourselves the BASIC QUESTION: "Is the approach I am using the very best I can use to resolve this conflict or solve this problem?"

The BASIC QUESTION:

IS THIS APPROACH THE VERY BEST I CAN USE TO RESOLVE THIS CONFLICT OR SOLVE THIS PROBLEM?

Section 3:

PREPARATION FOR PROBLEM SOLVING

IN THIS SECTION YOU WILL FIND:

- MENTAL PREPARATION
    - Being in the flow; being centered
    - Training for a flowing and centered response
- KNOWING WHERE OUR MINDS ARE
- A MENTAL PORTRAIT OF EFFECTIVE PROBLEM SOLVERS
- THE MISOGI BREATHING TECHNIQUE
- DEALING WITH DIFFICULT PEOPLE: THE SPONGEHEAD TECHNIQUE
- SEEING THE BIG PICTURE: THE SOFT EYES TECHNIQUE

MENTAL PREPARATION

The key to successful problem solving starts within our own minds. Our mental attitude involves more than just 'thinking' about a conflict or a problem. It involves an awareness of our emotions, our level of tension, and a commitment to being in the best possible frame of mind to approach the situation.

In this section we will work with what an optimum frame of mind might feel like and provide some exercises which can empower us to more readily enter into the best possible mental state for solving problems.

Being in the Flow; Being Centered

Aikido teacher Tom Crum describes this best possible frame of mind as being in the "flow". Others have described this state as being "centered".

We can think of a balanced state of mind as 'centered'. Why 'centered'? Visualize a potter's wheel. The potter has a lump of clay and a spinning disk on which he hopes to create a beautiful pot. If he manipulates the clay from anywhere but dead center on the wheel, however, his 'pot' will ultimately fly out of control, sending wet clay everywhere. It is only from the place of 'center' that we can begin to create.

In a flowing and centered response, we are emotionally as well as intellectually involved in whatever is going on. We know what we are feeling and we are able to sense what the others are feeling, also. We are not controlled by our emotions or by the emotions of others. We may feel anger, or exhilaration, and we just notice that we are feeling these things, while we continue on with our process. If it is appropriate and helpful to express a feeling, we do. If it is not, we do not. We are sensitive to the timing of things and to the needs of others as they arise. We become masters of ourselves and of the situation.

We understand clearly our own interests and we seek to *just as clearly* understand the interests of others. We look for commonalties and openings which allow us to craft solutions which are acceptable to all parties. We are not driven by anger, by fear of conflict or fear of loss, or by greed.

Training For a Flowing and Centered Response

A flowing and centered response to conflict is something that some of us naturally do better than others, but it is something that all of us can learn. Over the past 30 years the habits and methods of effective conflict resolvers have been studied, and the results are available to those of us who seek to extend our skills. We have a clear understanding of the skills needed to expand our competence beyond an automatic 'fight', 'flight', or 'acquiesce' type of response.

The tools and techniques which follow come from many diverse cultures and have sprung from the disciplines of the martial arts, national and international negotiations, and mediation theory and practice. There is a remarkable underlying similarity in the core approach from these different disciplines. It appears that many of the most useful practices of conflict resolution are not culture bound; as with a smile, they are universal.

KNOWING WHERE OUR MINDS ARE

> *"The prime quality of earth is balance. The prime quality of fire is focus, pointedness, and acuity. The prime quality of water is adaptability. As a person, you have the qualities: balance, focus, and adaptability. You excel or lack in one of these areas in any particular situation. When you are in a high stress situation and act appropriately, then you are balanced, focused, and adaptable. These are the qualities of centeredness."*
>
> *--Terry Dobson*

The first step in creating a flowing and centered state within us is to *notice where we are right now.* This means to pay attention to our thoughts, our posture, our muscle tension, our breathing, our emotions and our overall mood. Noticing where we are is the first step in getting where we want to be.

I've lost my mind...

> *"When all is said and done, the final and ultimate application of a martial artists' art is the application of his art to himself. Clearly, understanding and resolving the conflict, however small, that goes on within his mind is the purest application of his art.*
>
> *--Walter Muryasz*

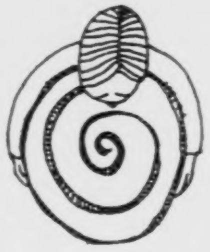
A MENTAL PORTRAIT OF EFFECTIVE PROBLEM SOLVERS

Here are some descriptors which indicate a person who is maximally ready to deal with conflict or stress; a person who is ready to give a flowing, centered response to conflict:

- A feeling of relaxed power and supple responsiveness
- A sense of seeing everything but being controlled by nothing
- A sense of inner calmness; a slowing of thoughts and associations; an ability to focus clearly on both the big picture and the details
- A balanced and receptive physical posture
- A reduced or eliminated startle reflex
- An adaptable and open mind which says 'yes' more readily than 'no'
- The ability to recover rapidly when one does 'lose it'

When we can be balanced in this way, we can allow all of another person's emotions to register clearly in our awareness but then to pass through without leaving any residue or trace to contaminate our own response. We are able to give a clear and compassionate response to anger, hostility, fear, grief, or rage. Our minds are cleared from opinions and prejudices and we are able to sense subtle timings and generate new possibilities.

It's important to realize that this description of a 'flowing, centered' state refers to a way of being in the world that is accomplished by all of us in varying degrees throughout the day; it is not an all-or-nothing state of mind. Our ability to enter and remain in this balanced state can be enhanced, empowered and improved through conscious training. When we have this foundation, it becomes much easier to successfully apply the skills of communication, negotiation and problem solving which will follow in this manual.



THE MISOGI BREATHING TECHNIQUE

Misogi breathing for relaxation and stress reduction is a Japanese breathing method that has been used for centuries.

1. Sit or stand with the back straight. Loosen the shoulders, arms, torso and legs, allowing weight to drop 'underside'. Allow your entire body to be still, yet full of energy...relaxed but not limp.

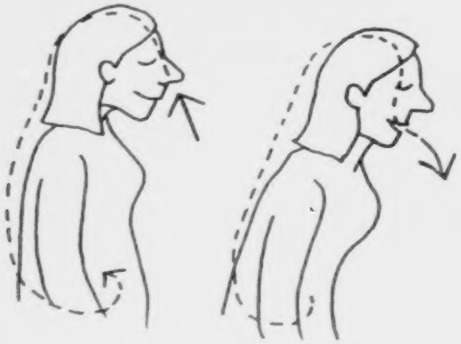
2. Focus awareness on the area at the very center of your body, a few inches below the navel.

3. Begin with an outbreath through the mouth, allowing all air to naturally empty, then gently lean forwards a few degrees to expel remaining air. Return to erect posture.

4. Begin with an inbreath through the nose: breathe in the 'energy' of the universe and allow it to travel up the nose to the top of the head, then down the spine to the base of the spine, and then into the center of your body and from there to every cell in the body.

5. Continue with outbreath through the mouth, following the reverse path: visualize gathering waste, negativity, and weakness from each cell, collecting it in the center of your body, and allowing it to flow up the spine, to the top of the head, and out the mouth. Lean forward very gently at the end of each outbreath to expel remaining air.

6. Allow your breathing to naturally slow down as the cycle progresses. A cycle can last from 3 to 20 minutes, or longer.



DEALING WITH DIFFICULT PEOPLE: THE SPONGEHEAD TECHNIQUE

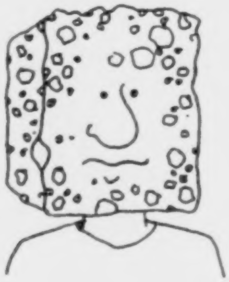
One day, a physician was in his office, writing out reports after seeing patients all day. Suddenly, without warning, an irate man burst into the office, stormed past the receptionist (who made valiant attempts to stop him), strode directly into the doctor's inner office, and slammed the door behind him. The shaken receptionist could hear the man yelling, screaming, and pounding his fist on something. This seemed to go on for a very long time. Finally, the man opened the door and came out, slammed it loudly, and ignored the receptionist as he plowed out into the street.

All was quiet. It took quite some time for the receptionist's heart to stop pounding in her chest. There was no noise from the doctor's inner office. She was, naturally, very concerned about how the doctor must be feeling.

After a few minutes, she thought she heard a noise from behind the doctor's door...it sounded like someone was whistling a happy tune! She opened the door and peeked in, and was greeted with the sight of the doctor peacefully working on his records and, indeed, humming a happy tune. His face was serene and his manner, relaxed.

"I was so worried about you", she said, "That man was just ripping you up one side and down the other!".

"Yes, he certainly did" replied the doctor. "But you know, it's very difficult to be upset by a spongehead!".



Steps in the Spongehead Technique:

1. Listen carefully to the content of the attack against you. Do not respond verbally to the points that are made. Try not to be defensive, just listen.

2. As you are listening, be brutally honest with yourself. What parts of what the other is saying have shreds of truth to them, no matter how distorted?

3. Mentally, sincerely thank the other for pointing those out to you, and giving you the opportunity to improve yourself. When you have completed this step, you will have 'separated out' the truth in what was said.

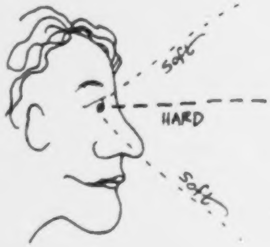
4. The rest of the other's diatribe is obviously not true, and the arguments that are made are full of holes. Visualize the other's head as a giant, blue-green sponge. From the holes, the inaccurate, misleading and untrue statements pour out, as water from a leaky jug. The other now looks absurd, and, far from being threatening, it may be all you can do to keep from breaking out in laughter. It is, truly, very difficult to get upset with a spongehead!

SEEING THE BIG PICTURE: SOFT EYES

Sometimes, the smallest changes we make can have the largest effects. One example of this comes from what we can do with our eyes. How we look at someone, or at a group of people, can completely change how we respond.

> ***"Do not look at your opponent's sword, or you will be slain by his sword. Do not look into his eyes, or you will be drawn into his eyes. Do not look at him, or your spirit will be distracted."***
> ***--Morihei Uyeshiba, founder of Aikido***

We can think of how we use our eyes as being either 'hard' or 'soft'. Hard eyes are when we focus intently on any one thing or point, as when we look at the tip of someone's nose or strain to read the writing on a far away street sign. There is a certain tension, a narrowing of vision. Peripheral vision becomes lost. We may become caught up in whatever it is we are looking at. Sometimes, hard eyes can be very useful, as when we are putting a complex model together or trying to get a splinter out of our child's finger.



Soft eyes happen when we relax the muscles around our eyes and let ourselves see with our peripheral vision as well as with our central, focused vision. We see the individual in front of us, but we also see the people to either side, the clock above his head, the lights on the ceiling and the pattern on the floor. We take in everything and are distracted by nothing. Seeing in this way sends an entirely different set of signals to the brain from seeing with hard eyes. As our eyes see more, somehow our brains become more open to the diversity of possibilities that always surround us. Soft eyes also tend to have a calming effect on the people around us, and often on ourselves as well.

Section 4:

COMMUNICATION SKILLS

IN THIS SECTION YOU WILL FIND:

- THE THREE COMPONENTS OF COMMUNICATION
- SENDING MESSAGES
    - Verbal messages
    - Nonverbal messages
    - Paraverbal messages
    - The importance of consistency
- RECEIVING MESSAGES
    - Listening
    - Giving full physical attention to the speaker
    - Being aware of the speaker's nonverbal messages
    - Paying attention to the words and feelings
    - Reflective listening skills
    - Additional verbal communication tools
- BARRIERS TO EFFECTIVE COMMUNICATION
    - Verbal communication barriers
    - Nonverbal communication barriers

COMMUNICATION SKILLS

> *"We all use language to communicate, to express ourselves, to get our ideas across, and to connect with the person to whom we are speaking. When a relationship is working, the act of communicating seems to flow relatively effortlessly. When a relationship is deteriorating, the act of communicating can be as frustrating as climbing a hill of sand."*
>
> *- Chip Rose, attorney and mediator*

THE THREE COMPONENTS OF COMMUNICATION

On a daily basis we work with people who have different opinions, values, beliefs, and needs than our own. Our ability to exchange ideas with others, understand others' perspectives, solve problems and successfully utilize the steps and processes presented in this training will depend significantly on how effectively we are able to communicate with others.

The act of communicating involves verbal, nonverbal, and paraverbal components. The verbal component refers to the content of our message – the choice and arrangement of our words. The nonverbal component refers to the message we send through our body language. The paraverbal component refers to how we say what we say - the tone, pacing and volume of our voices.

In order to communicate effectively, we must use all three components to do two things:

1. Send clear, concise messages.
2. Hear and correctly understand messages someone is sending to us.

Communication Involves Three Components:

1. **Verbal Messages** - the words we choose
2. **Paraverbal Messages** - how we say the words
3. **Nonverbal Messages** - our body language

These Three Components Are Used To:

1. **Send Clear, Concise Messages**
2. **Receive and Correctly Understand Messages Sent to Us.**

SENDING MESSAGES

Verbal Messages

Our use of language has tremendous power in the type of atmosphere that is created at the problem-solving table. Words that are critical, blaming, judgmental or accusatory tend to create a resistant and defensive mindset that is not conducive to productive problem solving. On the other hand, we can choose words that normalize the issues and problems and reduce resistance. Phrases such as *"in some districts, people may . . .", "it's not uncommon for . . ."* and *"for some folks in similar situations"* are examples of this.

Sending effective messages requires that we state our point of view as briefly and succinctly as possible. Listening to a rambling, unorganized speaker is tedious and discouraging - why continue to listen when there is no interchange? Lengthy dissertations and circuitous explanations are confusing to the listener and the message loses its concreteness, relevance, and impact. This is your opportunity to help the listener understand YOUR perspective and point of view. Choose your words with the intent of making your message as clear as possible, avoiding jargon and unnecessary, tangential information.

BLAH
BLAH
BLAH

Effective Verbal Messages:

1. **Are brief, succinct, and organized**
2. **Are free of jargon**
3. **Do not create resistance in the listener**

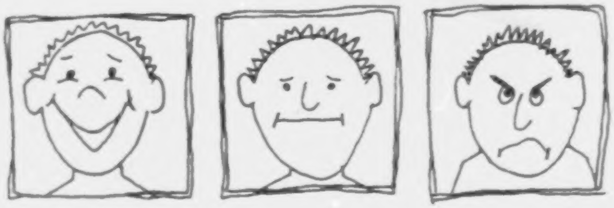
Nonverbal Messages

The power of nonverbal communication cannot be underestimated. In his book, Silent Messages, Professor Albert Mehrabian says the messages we send through our posture, gestures, facial expression, and spatial distance account for 55% of what is perceived and understood by others. In fact, through are body language we are always communicating, whether we want to or not!

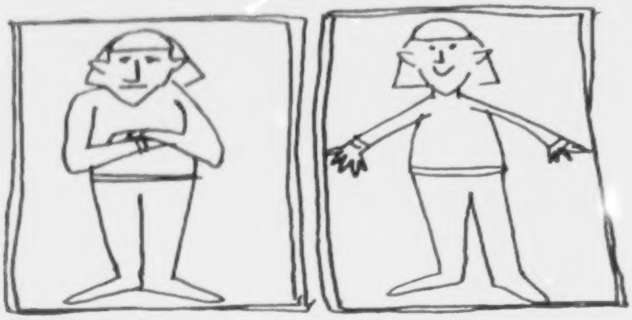
You cannot not communicate.

Nonverbal messages are the primary way that we communicate emotions:

- **Facial Expression**: The face is perhaps the most important conveyor of emotional information. A face can 'light up' with enthusiasm, energy, and approval, express confusion or boredom, and scowl with displeasure. The eyes are particularly expressive in telegraphing joy, sadness, anger, or confusion.



- **Postures and Gestures**: Our body postures can create a feeling of warm openness or cold rejection. For example, when someone faces us, sitting quietly with hands loosely folded in the lap, a feeling of anticipation and interest is created. A posture of arms crossed on the chest portrays a feeling of inflexibility. The action of gathering up one's materials and reaching for a purse signals a desire to end the conversation.



Nonverbal Messages:

1. **Account for about 55% of what is perceived and understood by others.**
2. **Are conveyed through our facial expressions as well as our postures and gestures.**

Paraverbal Messages

Paraverbal communication refers to the messages that we transmit through the tone, pitch, and pacing of our voices. It is *how we say something,* not *what we say.* Professor Mehrabian states that the paraverbal message accounts for approximately 38% of what is communicated to someone. A sentence can convey entirely different meanings depending on the emphasis on words and the tone of voice. For example, the statement, "I didn't say you were stupid" has six different meanings, depending on which word is emphasized.

"I didn't SAY you were stupid."
"I didn't say YOU were stupid."
"I didn't say you were STUPID."

Some points to remember about our paraverbal communication:

- When we are angry or excited, our speech tends to become more rapid and higher pitched.
- When we are bored or feeling down, our speech tends to slow and take on a monotone quality.
- When we are feeling defensive, our speech is often abrupt.

Paraverbal Messages:

1. **Account for about 38% of what is perceived and understood by others.**
2. **Include the tone, pitch, and pacing of our voice**

The Importance of Consistency

In all of our communications we want to strive to send consistent verbal, paraverbal and nonverbal messages. When our messages are inconsistent, the listener may become confused. Inconsistency can also create a lack of trust and undermine the chance to build a good working relationship.

When a person sends a message with conflicting verbal, paraverbal and nonverbal information, the nonverbal information tends to be believed. Consider the example of someone, through a clenched jaw, hard eyes, and steely voice, telling you they're not mad. Which are you likely to believe? What you see or what you hear?

RECEIVING MESSAGES

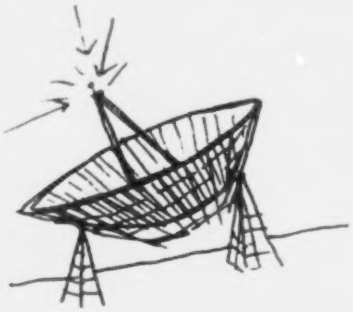
Listening

The key to receiving messages effectively is *listening.* Listening is a combination of hearing what another person says and psychological involvement with the person who is talking. Listening requires more than hearing words. It requires a desire to understand another human being, an attitude of respect and acceptance, and a willingness to open one's mind to try and see things from another's point of view.

Listening requires a high level of concentration and energy. It demands that we set aside our own thoughts and agendas, put ourselves in another's shoes and try to see the world through that person's eyes. True listening requires that we suspend judgment, evaluation, and approval in an attempt to understand another's frame of reference, emotions, and attitudes. Listening to understand is, indeed, a difficult task!

Often, people worry that if they listen attentively and patiently to a person who is saying something they disagree with, they are inadvertently sending a message of agreement.

When we listen effectively we gain information that is valuable to understanding the problem as the other person sees it. We gain a greater understanding of the other person's perception. Afterall, 'the truth' is subjective and a matter of perception. When we have a deeper understanding of another's perception, whether we agree with it or not, we hold the key to understanding that person's motivation, attitude, and behavior. We have a deeper understanding of the problem and the potential paths for reaching agreement.



Listening

1. **Requires concentration and energy**
2. **Involves a psychological connection with the speaker**
3. **Includes a desire and willingness to try and see things from another's perspective**
4. **Requires that we suspend judgment and evaluation**

> *"Listening in dialogue is listening more to meaning than to words . . .In true listening, we reach behind the words, see through them, to find the person who is being revealed. Listening is a search to find the treasure of the true person as revealed verbally and nonverbally. There is the semantic problem, of course. The words bear a different connotation for you than they do for me. Consequently, I can never tell you what you said, but only what I heard. I will have to rephrase what you have said, and check it out with you to make sure that what left your mind and heart arrived in my mind and heart intact and without distortion."*
>
> *- John Powell, theologian*

Learning to be an effective listener is a difficult task for many people. However, the specific skills of effective listening behavior can be learned. It is our ultimate goal to integrate these skills into a sensitive and unified way of listening.

Key Listening Skills:

Nonverbal:

- Giving full physical attention to the speaker;
- Being aware of the speaker's nonverbal messages;

Verbal:

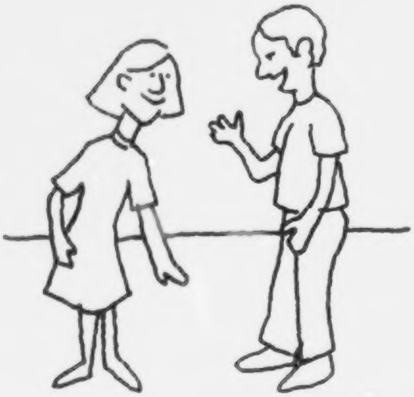
- Paying attention to the words and feelings that are being expressed;
- Using reflective listening tools such as paraphrasing, reflecting, summarizing, and questioning to increase understanding of the message and help the speaker tell his story.

Giving Full Physical Attention To The Speaker

Attending is the art and skill of giving full, physical attention to another person. In his book, People Skills, Robert Bolton, Ph.D., refers to it as "listening with the whole body".

Effective attending is a careful balance of alertness and relaxation that includes appropriate body movement, eye contact, and "posture of involvement". Fully attending says to the speaker, "What you are saying is very important. I am totally present and intent on understanding you". We create a posture of involvement by:

- Leaning gently towards the speaker;
- Facing the other person squarely;
- Maintaining an open posture with arms and legs uncrossed;
- Maintaining an appropriate distance between us and the speaker;
- Moving our bodies in response to the speaker, i.e., appropriate head nodding, facial expressions.



As psychiatrist Franklin Ernst, Jr. writes in his book, Who's Listening?".

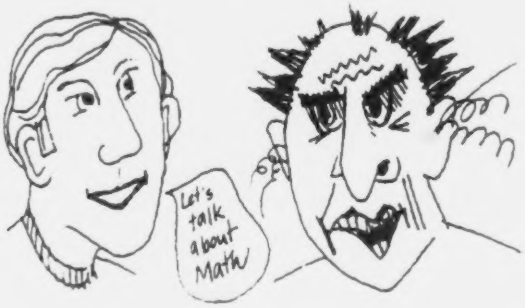
> *"To listen is to move. To listen is to be moved by the talker - physically and psychologically . . . The non-moving, unblinking person can reliably be estimated to be a non-listener . . . When other visible moving has ceased and the eyeblink rate has fallen to less than once in six seconds, listening, for practical purposes, has stopped."*

Being Aware of the Speaker's Nonverbal Messages

When we pay attention to a speaker's body language we gain insight into how that person is feeling as well as the intensity of the feeling. Through careful attention to body language and paraverbal messages, we are able to develop hunches about what the speaker (or listener) is communicating. We can then, through our reflective listening skills, check the accuracy of those hunches by expressing in our own words, our impression of what is being communicated.

Paying Attention to the Words and Feelings

In order to understand the total meaning of a message, we must be able to gain understanding about both the *feeling* and the *content* of the message. We are often more comfortable dealing with the content rather than the feelings (i.e., the relationship), particularly when the feelings are intense. Our tendency is to try and ignore the emotional aspect of the message/conflict and move directly to the substance of the issues.



This can lead to an escalation of intense emotions. It may be necessary to deal directly with the relationship problem by openly acknowledging and naming the feelings and having an honest discussion about them prior to moving into the substantive issues. If we leave the emotional aspect unaddressed, we risk missing important information about the problem as well as derailing the communication process.

Reflective Listening Skills

Reflective listening or responding is the process of restating, in our words, the feeling and/or content that is being expressed and is part of the verbal component of sending and receiving messages. By reflecting back to the speaker what we believe we understand, we validate that person by giving them the experience of being heard and acknowledged. We also provide an opportunity for the speaker to give us feedback about the accuracy of our perceptions, thereby increasing the effectiveness of our overall communication.

Paraphrasing - This is a concise statement of the content of the speaker's message. A paraphrase should be brief, succinct, and focus on the facts or ideas of the message rather than the feeling. The paraphrase should be in the listener's own words rather than "parroting back", using the speaker's words.

- "You believe that Jane needs an instructional assistant because she isn't capable of working independently."
- "You would like Bob to remain in first grade because you think the activities would be more developmentally appropriate."
- "You do not want Beth to receive special education services because you think it would be humiliating for her to leave the classroom at any time."
- "You want to evaluate my child because you think he may have an emotional disability.

Reflecting Feeling - The listener concentrates on the feeling words and asks herself, “How would I be feeling if I was having that experience?” She then restates or paraphrases the feeling of what she has heard in a manner that conveys understanding.

- “You are very worried about the impact that an evaluation might have on Lisa’s self esteem”.
- “You are frustrated because dealing with Ben has taken up so much of your time, you feel like you’ve ignored your other students.”
- “You feel extremely angry about the lack of communication you have had in regards to Joe’s failing grades.”
- “You’re upset because you haven’t been able to get in touch with me when I’m at work.”

Summarizing - The listener pulls together the main ideas and feelings of the speaker to show understanding. This skill is used after a considerable amount of information sharing has gone on and shows that the listener grasps the total meaning of the message. It also helps the speaker gain an integrated picture of what she has been saying.

- “You’re frustrated and angry that the assessment has taken so long and confused about why the referral wasn’t made earlier since that is what you thought had happened. You are also willing to consider additional evaluation if you can choose the provider and the school district will pay for it”.
- “You’re worried that my son won’t make adequate progress in reading if he doesn’t receive special services. And you feel that he needs to be getting those services in the resource room for at least 30 minutes each day because the reading groups in the classroom are bigger and wouldn’t provide the type of instruction you think he needs.”

Additional Verbal Communication Tools

A number of other verbal tools encourage communication and facilitate the goal of gaining a more thorough understanding of another's perspective:

Questioning - the listener asks open ended questions (questions which can't be answered with a 'yes' or a 'no') to get information and clarification. This helps focus the speaker on the topic, encourages the speaker to talk, and provides the speaker the opportunity to give feedback.

- "Can you tell us more about Johnny's experience when he's in the regular classroom?"
- "How was it for Susie when she rode the special ed. bus for those two weeks?"
- "Tell us more about the afterschool tutoring sessions."
- "What kinds of skills do you think it's important for Jim to learn in a social skills class?"
- "Could you explain why you think it's difficult for Ben to be on the playground for an hour?"
- "I'm confused - are you worried that the testing may mean time out of the classroom for Jim or is there something else?"

Verbal Communication Tools

1. **Paraphrasing** - a brief, succinct statement reflecting the content of the speaker's message.
2. **Reflecting Feeling** - a statement, in a way that conveys understanding, of the feeling that the listener has heard.
3. **Summarizing** - a statement of the main ideas and feelings to show understanding.
4. **Questioning** - asking open questions to gain information, encourage the speaker to tell her story, and gain clarification.

Barriers to Effective Communication

> *"A barrier to communication is something that keeps meanings from meeting. Meaning barriers exist between all people, making communication much more difficult than most people seem to realize. It is false to assume that if one can talk he can communicate. Because so much of our education misleads people into thinking that communication is easier than it is, they become discouraged and give up when they run into difficulty. Because they do not understand the nature of the problem, they do not know what to do. The wonder is not that communicating is as difficult as it is, but that it occurs as much as it does."*
>
> *- Reuel Howe, theologian and educator*

When people are under stress, they are more apt to inject communication barriers into their conversation. These barriers can exist in any of the three components of communication (verbal, paraverbal, and nonverbal). According to Thomas Gordon, author of the Parent Effectiveness Training program, people use communication barriers 90% of the time in conflict situations. For this reason, it is worthwhile to describe some of the common responses that will, inevitably, have a negative effect on communications:

Verbal Communication Barriers

1. Attacking (interrogating, criticizing, blaming, shaming)

- "If you were doing your job and supervising Susie in the lunch line we probably wouldn't be in this situation, would we?"

- "Have you followed through with the counseling we asked you to do? Have you gotten Ben to the doctor's for his medical checkup? Did you call and arrange for a Big Brother? Have you found out if you're eligible for food stamps?"

- "From what I can see, you don't have the training to teach a child with ADHD. Obviously if you did you would be using different strategies that wouldn't make her feel like she's a bad person."

2. "You Messages" (moralizing, preaching, advising, diagnosing)

- "You don't seem to understand how important it is for your child to get this help. Don't you see that he's well on his way to becoming a sociopath?"

- "You obviously don't realize that if you were following the same steps we do at home you wouldn't be having this problem. You don't seem to care about what's going on in this child's life outside of school."

3. Showing Power (ordering, threatening, commanding, directing)

- "If you don't voluntarily agree to this evaluation we can take you to due process. Go ahead and file a complaint if you want to."

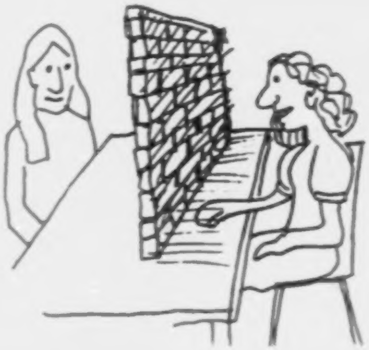
- "I'm going to write a letter of complaint to the superintendent and have this in your file if you don't stop humiliating my son in front of his classmates. I know my rights."

4. Other Verbal Barriers: shouting, name calling, refusing to speak.

Nonverbal Communication Barriers

1. Flashing or rolling eyes
2. Quick or slow movements
3. Arms crossed, legs crossed
4. Gestures made with exasperation
5. Slouching, hunching over
6. Poor personal care
7. Doodling
8. Staring at people or avoiding eye contact
9. Excessive fidgeting with materials

All of these examples of barriers thwart communication, mutual understanding, respect, problem solving, and identifying solutions that will meet everyone's needs. They put a serious strain on relationships that ultimately need to be collaborative in order to most effectively meet the needs of our children.



Use of these "communication errors" results in increased emotional distancing between the parties, escalation in the intensity of the conflict and a negative environment for everyone involved.

Effective Communication . . .

It is two way.

It involves active listening.

It reflects the accountability of speaker and listener.

It utilizes feedback.

It is free of stress.

It is clear.

Section 5:

COLLABORATIVE PROBLEM SOLVING: STEPS IN THE PROCESS

IN THIS SECTION YOU WILL FIND:

- COLLABORATIVE PROBLEM SOLVING VS. BEING POSITIONAL
- THOUGHTS ABOUT PREPARATION
    - Figure Out Your Interests
    - Figure Out Their Interests
    - Consider Some Options
    - What's a Fair Standard?
    - Keep an Open Mind
- STEPS IN THE COLLABORATIVE PROCESS
- SHARE PERSPECTIVES
    - Perception
    - Emotions
- DEFINE THE ISSUES
    - Setting the Agenda for Discussion
- IDENTIFY THE INTERESTS
    - Finding the Common Ground of Shared Interests
    - Look for Powerful Interests
- GENERATE OPTIONS
    - Brainstorming
- DECIDE ON OBJECTIVE CRITERIA
- EVALUATE OPTIONS AND REACH AGREEMENT

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COLLABORATIVE PROBLEM SOLVING

COLLABORATIVE PROBLEM SOLVING VS. BEING POSITIONAL

All of us are involved in some kind of problem solving everyday, both in our personal and professional lives. In our families and our work environments we are faced with a multitude of issues that require making decisions made with others.

Some of these decisions are small and do not have a long term impact on our lives. Examples of these might be where we will go to dinner tonight, what program we will watch on television, or what movie we will see.

Other decisions are significant and require substantial consideration because of the potential impact they will have, both on our lives and our relationships with others. Examples of these might be whether we should sell our house and move, should we send our child to a private school, is it time for a nursing home for an aging parent.

Unless we live in total isolation, we are, by necessity, involved with problem solving and negotiating with others at some level as a regular part of our lives.

In their book, Getting to Yes, Roger Fisher and William Ury define negotiation as follows:

> *"Negotiation is a basic means of getting what you want from others. It is back-and-forth communication designed to reach agreement when you and the other side have some interests that are shared and others that are opposed."*

In spite of the fact that we frequently engage in negotiation, for many of us, our repertoire of negotiating skills is limited. Out of habit and lack of knowledge about alternative strategies we try to solve problems by stating, and sticking to, our position. In a conflict, one side states what they want ("I want my second grader to be in the third grade for math") and the other side states their position ("Your child needs to stay in the second grade for math"). Each side takes turns (sometimes democratically, sometimes not), restating their beliefs and opinions and becoming more and more entrenched in their own position, which they see as the only acceptable solution to the problem as they perceive it. The goal becomes trying to convince the other side of the rightness of their position.

When we insist on our position as a way to solve the problem, in order for one party to be satisfied with the outcome, the other party must be dissatisfied. One party must 'give up' their position in order to reach agreement. Reaching an agreement depends on who can be the most powerful, the most persuasive, and/or the most willing to endure until 'the bitter end'. If neither party is willing to 'back down', the problem solving process may become stalled with no agreement being reached at all. This type of "positional bargaining" is limited in its effectiveness in the following ways:

1. It can be inefficient. Haggling, attempting to convince, and resorting to tactics such as stonewalling or holding out often result in multiple meetings which invariably extend over a long period of time. This not only creates a stressful situation for the participants, but may have a negative impact on a child's education because while this inefficient problem solving is going on, the child may not be receiving important services and support.

2. It can produce unwise agreements. When we bargain from two positions - yours and mine - we are essentially considering only two possible solutions to a problem. By putting our efforts into trying to convince the other side of our solution, we forfeit the opportunity to consider other possibilities that may meet our needs and be more satisfying for everyone.

3. It can be hard on the relationship. This type of problem solving creates stress, anger and resentment for all participants. Bitter feelings may impact future problem solving efforts and may have a detrimental impact on a child's program as well as his attitude towards his school experience.

A Position

- Is one solution to a problem

Problem Solving from Positions is Limited Because:

- It can be inefficient
- It can produce unwise agreements
- It can be hard on the relationship

In this section, we present a model for collaborative problem solving based on the work of Roger Fisher, William Ury, and others. In collaborative problem solving, parties work side by side to solve the problem together. Rather than negotiating from opposing positions, the parties, through a number of different techniques which we will describe, identify problems in terms of INTERESTS.

Working with interests is a key concept in collaborative problem solving. An interest is the underlying need or concern that a party is trying to have satisfied. It is the thing that is motivating someone to seek a solution. A statement that describes one possible solution to meet that need or concern is a position. When we go beyond the position to uncover the needs and concerns, we create an opportunity to explore a variety of options or possible solutions that we may not have previously considered. By 'expanding the pie' in this manner, we are able to move beyond agreements which are marginally sufficient to agreements that maximize solutions, meet more of everyone's needs and are 'win-win' rather than 'win-lose'. This process has the potential to create greater satisfaction with agreements and build positive working relationships.

The advantages of working collaboratively to solve problems:

- Working with interests often results in the identification of more possible solutions than were originally considered;
- By "expanding the pie", we end up with fair agreements that potentially meet more of our needs and are "win-win" rather than "win-lose";
- Creates greater satisfaction for all of the parties and promotes a foundation for future problem solving that is respectful and energizing rather than negative and depleting.

THOUGHTS ABOUT PREPARATION

Whether you are a parent or a teacher, advance preparation is an important, though often ignored aspect of collaborative problem solving. Our lives are already incredibly busy.

For everyone who works in a school system, each day is filled with an agenda impossibly long to get through in the allotted eight hours. There are student contact time and supervisory responsibilities such as recess and lunchroom. The short breaks throughout the day are devoted to calling parents, meeting with a specialist, last minute planning for schedule changes, or meeting individually with a needy student. After school there are staff meetings, grade level meetings, parent meetings and if you're lucky, time to plan for the next day or correct some papers. Then add a challenging IEP meeting which requires extra effort, thought, communication, thinking, and information gathering.

A parent's reality may include juggling a full-time job or perhaps two part-time ones, grocery shopping, meal preparation, laundry, and general household maintenance. Add in shuttling children to afterschool activities or retrieving them from daycare and managing a schedule to provide the structure, supervision and support for a child with significant disabilities. There may be expectations or requests to fill in for another employee at work, or finding someone to fill in for you because you have a sick child. Or perhaps the daycare provider is ill and you need to find alternate care. If you are a single parent or are the one primarily responsible for "keeping it all together", add an additional dose of stress.

It is no wonder that carving out the necessary time PRIOR to an important meeting to address the needs of a child seems like an impossible task for all of the individual participants. Often 'preparation' may be limited to figuring out your position and what you'll "settle" for.

Preparing for a successful collaborative problem solving session requires addressing a number of different areas.

Figure Out Your Interests

As we stated earlier, your position represents your solution to a problem. Interests are the underlying need, want, or desire that we are trying to satisfy with our position (solution).

In Order to Understand Your Interests
Ask Yourself

- What is this going to satisfy?
- What need will be met if I were to have this?
- Why do I want this?

People generally have more than one interest (we will go into this more in depth) - make a list of yours, then spend some time prioritizing them. Which are the most important? Which are somewhat important? Is there some that you could more easily forego?

For example, if your position is ***I want my child to have a one-on-one instructional assistant***, your interests might be:

- I want my child to be physically safe;
- I want her to have the best possible learning environment;
- I want one person who will be able to bond and be available for her;
- I want her to be with peers so she can develop interpersonal skills;
- I want the peace of mind knowing that she is well cared for at all times.

Are some of these more important to you than others? Are some so critical that you wouldn't be able to come to agreement unless they were satisfied?

Figure Out Their Interests

Remember that collaborative problem solving is all about trying to satisfy the interests of ALL parties involved. Therefore, it is important to spend some time considering what the other side's interests might be.

In Order to Understand Their Interests

- Ask yourself, "If I was wanting that, what need(s) would I be trying to satisfy? What do they really want?"
- Attempt to understand the issues from their perspective – how do they see the situation and why?

Make a list of what you think their interests are. Look for the common ground or shared interests. Using the situation above, if the school's position is: ***Your child's needs can be met without a one-on-one aide***, you might identify the school's interests as:

- We want to spend as little money as possible while providing a quality program.
- We can provide an appropriate educational program for the child using the services of the resource room teacher and other paraprofessionals who are already in the building;
- We want the child to be physically safe;
- We want to encourage the child's independence and ability to bond with a variety of helping adults;
- We want the child to learn appropriate social skills;
- We want to avoid setting a precedent by providing a one-to-one aide.

Consider Some Options

Now that you've got lists of interests, think about some creative ways of meeting as many of these interests as you can. You have an opportunity to create options that will meet your shared needs. Think, also, about possibilities that could create value by 'expanding the pie' and meeting additional needs. Search for options that will benefit all parties.

What's a Fair Standard?

Inevitably, there will be some interests that are shared and some interests that are not. In coming up with an agreement our goal should be to find ways to try and meet the needs of as many interests as possible. This may seem challenging, particularly when some of the interests aren't shared by both parties or are opposites. For example, a parent may want the 'Cadillac' educational model, and the school district may want the 'Chevrolet' educational model. How will you reach agreement? One way to determine acceptable solutions is to decide on a fair, objective standard against which the solutions can be measured. The standard may be a selection of the most important interests, or it may be some other standard agreed upon by the participants.

Keep an Open Mind

Now that you've done the preparation - identified your interests and theirs, considered options, and a fair standard. - you are prepared for a collaborative problem solving meeting. The most important thing you can bring to this meeting, along with your preparedness, is your open mind. As you gain more information and insight about their interests (and maybe about yours), allow yourself to be flexible, capable of considering new ideas and revising your thinking. Though it is important to have a sense of where you are going, getting there requires flexibility and realizing that working collaboratively will generally get you farther along the road than working from an adversarial position.

Preparing for Collaborative Problem Solving

1. Figure Out Your Interests
2. Figure Out Their Interests
3. Think of Some Options That Would Meet the Interests
4. Consider What a Fair Standard Might Be
5. Keep an Open Mind

STEPS IN THE COLLABORATIVE PROCESS

As we develop our skills in problem solving, we will find that collaborative problem solving is not a linear process that proceeds methodically through prescribed steps. Identifying all of the interests of the parties must be accomplished before generating options. However, in order to do this effectively, we may need to move back and forth through the first steps, i.e., sharing information, defining issues, sharing more information, etc. in order to develop a clear picture of the interests. Reaching agreement often proceeds in a series of baby steps. One's best 'next step' is the step that will take us most effectively in that direction.

A Model for Collaborative Problem Solving

1. **Share Perspectives**
    - * Use our communication skills to understand the other's perception of the situation, their needs, and desires
2. **Define the Issues**
    - * Clarify the topics for discussion
3. **Identify the Interests**
    - * Go beyond the stated positions or solutions to figure out what the parties really need to have satisfied in order to reach agreement
    - * Look for the common ground between all parties
4. **Generate Options -**
    - * Brainstorm and generate ideas, looking at the problem from all angles and considering as many different ideas as possible
5. **Develop a Fair Standard or Objective Criteria for Deciding**
    - * Using an agreed upon criteria, combine and reduce options
    - * Strive to "expand the pie" and create agreements for mutual gain.
6. **Evaluate Options and Reach Agreement**

SHARE PERSPECTIVES

The parties have done their preparation, are seated at the meeting, and ready to share their perspectives on the situation. Perspective sharing establishes the groundwork for constructive problem solving. It provides an opportunity for people to share what is important to them and what they see as relevant to the situation at hand, both in terms of their perception of the facts and their feelings.

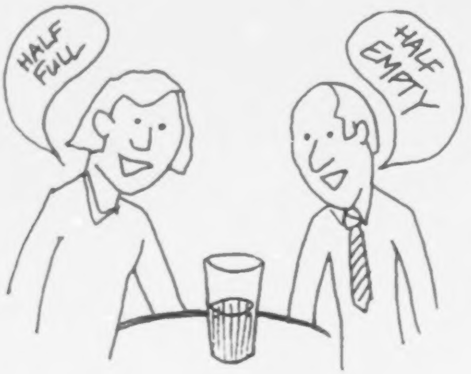
Perception

The process of perspective sharing allows each party to gain a clear understanding of the other's PERCEPTION of the problem situation, for this is at the heart of collaborative problem solving. As Fisher and Ury write in Getting to Yes,

> *"As useful as looking for objective reality can be, it is ultimately the reality as each side sees it that constitutes the problem in a negotiation and opens the way to a solution."*

Too often we focus on uncovering more data, facts, and objective information in an effort to reveal the 'truth' and convince the other side to see things as we do. Parties may actually agree on the objective data, but it is their differences in how they PERCEIVE the data that causes the conflict.

Seeking to understand how the other side sees the situation may not only help us see potential solutions that will meet many of our needs, but may also allow us to revise how WE see the problem. Consequently, the area of conflict may actually be reduced.



Perception is . . .

- Our interpretation of our world and our experiences
- Impacted by our values, beliefs, fears, and desires
- Unique to everyone

Understanding Perception Is Important Because . .

- It is the differences in people's perceptions that cause conflict
- Understanding how people perceive themselves and the world around them is the key to understanding their behavior
- Understanding people's perceptions will help open ways to finding solutions.

We can help others tell their stories by using effective communication and reflective listening skills to draw out all aspects of the situation as they perceive it. Through this process of sharing perspectives, we are able to begin identifying the issues that will need to be addressed.

Use Communication and Reflective Listening Skills to Help Others Share Their Stories

- Tell me more about . . .
- How did you experience it when . . .
- What was your reaction to . . .
- Help me understand your feelings about . .
- When did this happen?
- These seem to be the key ideas you have expressed . .
- I appreciate your willingness to resolve this matter . .
- Am I understanding you correctly when I say . .
- I hear you saying ______ - is that accurate?
- It sounds like . . .
- What happened when . . .
- It sounds like these are the important issues for you . .
- Is it accurate to say that your priorities are . . .
- Is there something you feel I don't understand?

Emotions

There are two aspects to a conflict: substance and emotions. Until the emotional aspects of a conflict are resolved, it is usually difficult to address the substantive ones.

During perspective sharing, parties may need a chance to vent their emotions. When feelings have been acknowledged and accepted, the emotional intensity often subsides and problem solving about the substantive issues can proceed.

If there are particularly strong feelings that are relevant to the issue, it may be necessary to go beyond acknowledgment and have an honest, forthright conversation about the emotional aspect of the problem situation. With a reduction in the emotional intensity, it becomes easier to focus on the issues and interests.

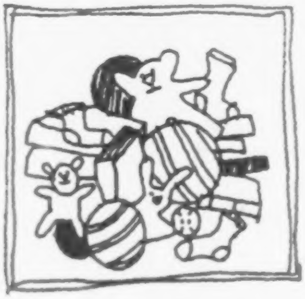
Information To Be Shared May Include:

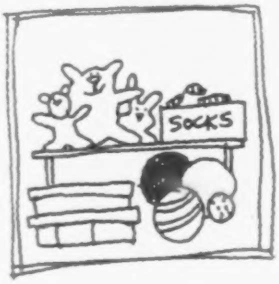
- Objective, observable information that is significant or important to the parties and the situation;
- People's reactions, emotions, and feelings;
- People's assumptions, beliefs, hopes, fears, and perceptions about themselves and the "other side";
- What people need in order to feel better about the situation.

DEFINE THE ISSUES

As perspectives are shared and clarifying and summarizing questions are asked, the issues or subjects for discussion and problem solving for both parties become identified. An issue may be defined as an element of the dispute that represents a party's need or interest. In the previous example of a parent who wanted his second grade child to receive math instruction in the third grade, the issue could be defined as 'math program'.

In many disputes (and special education disputes are certainly no exception), there has been a long history of conflict, intense emotion, and ineffective communication between the parties. Distilling the issues out of an excess of information can be a difficult task and requires frequent summarizing and checking for understanding. There are many ways to characterize or describe issues. Complex disputes may require issue 'categories' such as behavioral, instructional, supervision, etc. Within those broad categories there may be a number of smaller issues that can be identified. For example, if the broad issue is supervision, you may need to address recess, lunchroom, and the classroom as separate issues.





How an issue is described or 'framed' is important because it can have an impact on the ensuing discussion. Framing issues in neutral language that does not reflect the perceptions of either party will set the stage for productive discussions. For example, in a dispute where parents are angry that their child is not receiving her medication consistently at school, a neutral 'frame' for the issue would be 'Sue's medication' rather than 'Sue does not receive her medication'.

An ISSUE

- Is an element of the dispute that represents the party's need or interest
- Can be framed or described in neutral terms, so that collaborative discussion and problem solving are encouraged.

Setting the Agenda for Discussion

It is helpful in organizing an agenda for discussion, to list the issues and have some discussion about the best place to begin. There are a variety of ways to structure a discussion. Experience shows that "agreement begets agreement" so it is often desirable to begin with the easier issues that can be resolved quickly. The parties then have the positive experience of reaching agreement that can build momentum and the feeling of success.

IDENTIFY THE INTERESTS

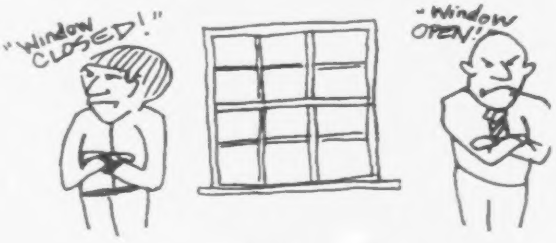
Once the issues have been framed, the parties are ready to figure out the interests that they need to have satisfied in order to reach agreement. Recall that an interest is a party's concern, need, desire or goal behind a position. It is what an individual wants to have satisfied - it expresses why the party cares. Interests provide the motivation for people to seek solutions.

An INTEREST

- Is a person's concern, desire or goal behind a position
- Is the underlying need that must be met if agreement is to be reached
- Is often confused with a position or solution
- Usually requires clarifying because it is not always immediately evident
- Provides the motivation to seek solutions.

As previously stated, people usually come to a discussion with a position or solution about a problem. We often confuse our position which is usually narrowly focused (someone needs to bring Susie's medication to her at 11 a.m.) with our need or interest (Susie needs to take medication consistently). When we are able to discover our underlying interests, we are able to move away from our positions and consider other options for meeting our needs. There is almost always more than one solution that will satisfy any interest.

Also, by focusing on what it is that we really need to have satisfied, we may find that the other party shares some of our interests - it just wasn't obvious when we looked at the positions.


"Window CLOSED!"
"Window OPEN!"

Why Work With Interests Instead of Positions

1. Generally, behind every interest there is more than one solution that will satisfy it.
2. In identifying underlying interests, we may be able to uncover more shared interests between the parties than conflicting ones.
3. Shared interests are not obvious when working with opposing positions.

Though it is clear that working with interests makes sense and is more productive than working with positions, it is not always easy to get at them. Afterall, positions are usually concrete and expressed where interests are intangible and unexpressed. Most people are unsure about what their real interests are and they need help in clarifying them. You can begin by asking questions when a position is expressed:

Questions to Ask to Get At Underlying Interests

- Why is that important to you?
- What would you experience if you had that?
- What changes would that solution make?
- What would that mean to you?
- How will you benefit from that?
- What's your basic concern in wanting that?

If a position is expressed in negative terms ("I don't want Jill in my classroom in the morning"), ask the following questions:

- Why don't you want that?
- What problems do you see with that?
- How is that a problem?
- What bothers you most about that?

Finding the Common Ground of Shared Interests

On any issue, most people have multiple interests. Some of those interests will be unique to them, others may differ from the other party's. Still, both parties will share some interests. Consider the example on page 5-6.

The stated parent position is ***I want my child to have a one-on-one instructional assistant.*** The stated school position is ***Your child's needs can be met without a one-on-one instructional assistant.***

A look at the list of interests of the parties reveals a number of shared interests:

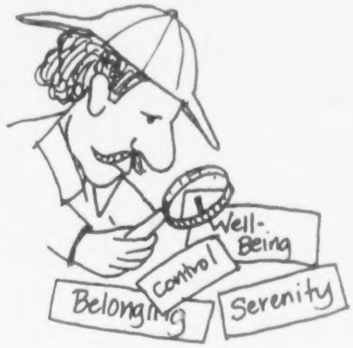
- Both parties want the child to be physically safe;
- Both parties want the child to be able to have a close, bonded relationship with adults;
- Both parties want the child to develop social skills with peers;
- Both parties want the child to have an appropriate learning environment that will meet her needs.

These shared interests or common ground, not immediately apparent when we first looked at the positions, lay the foundation for a constructive agreement. And often, when shared interests are identified, dealing with the opposing interests appears more manageable.

Look For Powerful Interests

In the process of identifying interests, look for what Fisher and Ury call the "bedrock concerns which motivate all people". These are basic human needs and include:

- Security
- Economic well-being
- A sense of belonging
- Recognition
- Control over one's life


Well-Being
Control
Belonging
Serenity

GENERATE OPTIONS

By this stage in the process, parties have had an opportunity to share, listen and develop an understanding of their interests as well as the interests of the other side. They have moved from an adversarial, entrenched posture to a problem solving, interest-based mode and are ready to brainstorm potential options and solutions.

Brainstorming

The goal of brainstorming is to generate as many ideas and options as possible. Most of us are not accustomed to inventing options and we slip easily into critiquing and judging as soon as possibilities are put on the board. This curtails the flow of ideas, people's willingness to take risks, and suppresses creativity. Therefore it is wise before beginning with this step, to establish ground rules for brainstorming. People need to be reminded that this is not the time for deciding - it is the time for inventing and discussing.

Rules of Brainstorming

1. **Make No Criticism**: judging is not allowed.
2. **Be Free-wheeling**: use your creativity and imagination, take risks.
3. **Go for Quantity**: the more and varied the ideas the better. Avoid thinking in terms of a single answer.
4. **Combine and Expand**: modify and build on other's ideas.

People are accustomed to searching for the one answer to a problem and often maintain a mindset that if one party wins, the other one loses. During the brainstorming process, record ideas on large pieces of newsprint so everyone has a clear view - this helps stimulate ideas and helps maintain a collaborative atmosphere by focusing everyone together.

Guidelines for generating options:

- Allow time for people to 'warm up' and get comfortable with the creative process.
- Encourage looking at the problem from all angles.
- Encourage dovetailing, piggybacking, combining and revising ideas.
- Look for ideas with mutual gain.

DECIDE ON OBJECTIVE CRITERIA

Once the brainstorming has taken place, the parties need to decide on the criteria against which the options will be evaluated. Without an objective standard or criteria, the decision process may end up as a contest of wills. An objective criteria allows everyone to focus on solutions and standards rather than on defending a particular option. It also allows people to be able to change their minds without ‘losing face’. By bringing in an agreed upon standard, you increase the likelihood that the resulting agreement will be mutually fair, just and in the best interests of the child.

The criteria may be as simple as your listed interests. It may have more than one component. The criteria may include any standards (budgetary, legal, scientific, procedural, etc.) upon which the parties agree.

Why Use Objective Criteria?

1. It protects the relationship from a contest of wills;
2. Allows the parties to use the time more effectively, focusing rather on standards and solutions rather than on defending their positions;
3. Enables parties to alter their perceptions without 'losing face';
4. Enables parties to strive toward mutual fairness and decisions that are in the best interest of the child.
5. Creates agreements that are fair and wise.

Objective Criteria may:

1. Be as simple as your collective interests;
2. Include budgetary standards, legal standards, scientific merit, procedural guidelines, etc.

EVALUATE OPTIONS AND REACH AGREEMENT

With a comprehensive list of brainstormed ideas and a mutually agreeable objective criteria, you are ready to evaluate the options and move toward creating agreements that will meet as many of your collective needs and interests as possible.

Depending on the length of the list of ideas, it may be necessary to use some techniques to narrow the field.

Techniques for Narrowing the Field of Options

Thumbs Up/Thumbs Down

This method provides a general sense of the parties' views on any particular item. Using the objective criteria, the parties go through the list of items and give a thumbs up, thumbs down, or thumbs neutral sign. Some items will obviously not meet the objective standard and can be eliminated with unanimous thumbs down.

Using stars

Star the items that the group thinks are best. Can any of the favored options be reworked to create even better options?

Combining Items for Mutual Gain

Some items may partially meet the objective criteria. Can some of these ideas be combined to create agreements for mutual gain? Can they be combined to actually meet more of the parties needs and interests, thereby expanding the total pie?

Throughout the process, participants need to continually refer back to the identified interests and the objective criteria to make sure they are meeting as many of their collective interests as possible. Always be asking the question, "Is this the best we can do?"

When an agreement is reached, ask the question, "Is this the best job we can do? Is there room for improvement? Do we have a maximized solution or one that is marginally acceptable?"

Section 6:

STRATEGIES FOR SUCCESS IN DISPUTE RESOLUTION: COPING WITH COMMON PROBLEMS

IN THIS SECTION YOU WILL FIND:

- THE SECRET OF ALWAYS KNOWING WHAT TO DO NEXT
- BABY STEPS
- SOLUTIONS FOR COMMON PROBLEMS
- DEFUSE RESISTANCE
    - The principle of force seeks force
    - Winning by joining
    - Psychological effects of joining
    - Joining strategies
- REFOCUS THE DISCUSSION OR REFRAME THE ISSUES
    - Appropriate summarizing
    - Normalization
    - Generate an hypothesis to explore
    - Move the discussion from the past to the future
    - Perform a relevancy check
- DEAL WITH THEIR EMOTIONAL BAGGAGE
    - Teflon technique
    - Empathy/normalization
    - Relevancy check
    - Stop and process
- EDUCATE AND BE THE ANGEL OF REALITY

THE SECRET OF ALWAYS KNOWING WHAT TO DO NEXT

In chapter 5 we have used the predictable aspects of disputes to lay out six steps to follow when undertaking a collaborative problem solving process. We are able to provide these steps because disputes have general similarities and human interactions tend to follow predictable patterns.

However, at the same time it is also true that each dispute between people is unique. Problem solving and dispute resolutions are organic processes which exist at the interface of art and science; it's impossible to follow a fixed set of rules to guarantee success.

One of the worst feelings during a problem solving session or a negotiation comes when we are perceiving that we are stuck, or that the process is going badly. What should we do now?

Mediation teacher Jim Melamed has a foolproof formula to follow for how to think about what to do next. Jim recommends that the dispute resolver ask a simple question:
"What is the very BEST thing I could be doing right now to help move this process along?"

"What is the very BEST thing I could be doing right now to help move this process along?"

By asking this question, we may be able to cut through our frustration and our feelings of stuckness and focus on the practical tasks at hand.

While we ponder this question, we may want to buy ourselves some time. We can always say something like, "I wonder if someone wouldn't mind just summarizing where we are right now", or we can just ask for a short time out for everyone. We can then ponder our next *baby step*.

BABY STEPS

We may already be realizing that solving problems rarely goes from 'problem' directly to 'solution' but instead gets there through a series of *baby steps* as the parties work through their issues and concerns. The eternal question of a dispute resolver is: what is the next best *baby step* to take?

In order to make this decision, it is first of all important to step back and take the 'lay of the land', considering both our internal state and also how others are responding to the process. What we observe to be occurring will guide our response, and we can then take the next baby step towards resolution and agreement.

BABY STEPS

Problem solving usually proceeds in *baby steps*, rather than going from 'problem' to 'solution' in one giant leap.

Asking good questions combined with *artful listening* can point the way to the next baby step.

When following the principle of *baby steps* it's helpful to keep in mind that we don't have to get a full, unqualified YES from others in order to proceed. All that is necessary for productive movement to occur is for their response to be more positive than negative. If they 'kind of' agree, we can take a baby step in that direction. If they disagree, we look for an area of agreement that we can move towards. This is sometimes called "moving towards the positive space". Our experience is that there is usually a way to find that positive space, even when the way seems completely blocked.

SOLUTIONS FOR COMMON PROBLEMS

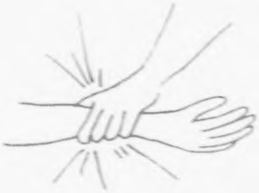
In the remainder of this section we will discuss common situations that might be preventing the next best positive baby step. We've divided common problems into four categories. For each category, we will introduce a variety of strategies which, depending upon the situation and the timing might be utilized as the next BEST thing to do to help reach agreement.

PROBLEM	***POSSIBLE SOLUTION***
1. There is overt negativity or resistance.	Defuse the resistance.
2. The process is becoming unfocused or veering off track in terms of the goals of the negotiation.	Refocus or clarify the direction.
3. Other people's emotions are getting in the way.	Deal with their emotional needs.
4. People do not seem to be understanding certain aspects of the issues or the consequences of a given course of action.	Educate or be an *angel of reality.*

Defuse Resistance

In communications between people, expressions of overt anger, argumentativeness, nastiness or hostility are some of the most difficult things to deal with. This type of resistance can infuse a whole room with negative, angry energy. The person expressing these emotions is in no mood to listen, negotiate, reason rationally or brainstorm. Unfortunately, it can also elicit an equally strong emotional response from the others involved, which can further derail effective communication. Knowing how to deal with these types of emotional situations is an important skill.

The Principle of Force Seeks Force



One of the easiest ways to understand what goes on between people during a hostile exchange is to look at what happens on a physical level. If I push you, you instinctively push back. This can be experienced easily enough: come up to someone and grab his or her lapel, or imagine someone doing this to you. Instantly, your entire awareness focuses on where you are being grabbed, and you push, pull or attempt to twist away. Your mind is automatically drawn to the 'point of contact' as you resist the aggression. This natural, instinctive protective reaction is called *Force Seeks Force*.

A psychological example

The same thing happens during an argumentative verbal exchange: you perceive yourself being attacked and so you rise to the challenge and 'fight back', whether overtly or subtly. A climate of opposition and conflict is created, with the potential for a winner and a loser or a hardening of positions. The parties are fighting each other instead of fighting together against the problem. Consider this hypothetical example at an IEP meeting:

Mother (assertively, bordering on the aggressive): My child is going to need a full time aide. She has ADD and can't focus without 1:1 help, and she also needs the help because other kids pick on her constantly.

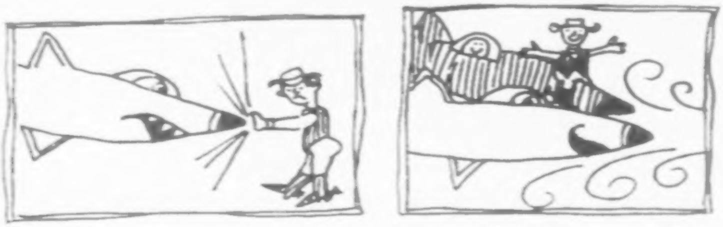
Principal: I don't think that will be possible. All of the aides are already assigned and the district office has told me there is no more aide money available.
Mother: Well, you're going to have to find the money somewhere. My child is on an IEP and in order to meet the goals that are in her IEP, she's going to need that aide. I'm sorry, but that's really your problem, not mine.
Principal: I'm confident that we can meet the goals in her IEP using existing staff, but without changing assignments or assigning a person directly to your daughter.
Mother: I'm telling you she can't succeed without 1:1 help. I know my rights, and I know that you have to provide her all the services she needs in order to meet her IEP goals.
Principal: Yes, and we will meet her IEP goals, but not by providing a 1:1 aide. I will decide how to allocate staff time in my building.
Mother: That's not good enough! I won't have my daughter in a school where she will experience failure and have to endure insults from other children. I'm pulling her out until I can contact the Department of Education and file a formal complaint!

Winning by Joining

The secret of dealing with resistance is not to fight it, but to *join* it. How is it possible to join with someone's resistance or hostility, and why would we even want to? Because ultimately it gives us control over the situation, and the chance to return all participants to calmness and clarity.

A few moments of thought can help us realize that fighting back directly is not usually very effective. Think of the last time you were in an argument. Who was right? (Of course, you were.) Did the person arguing with you make you change your mind? (Probably not!).

It's important to understand that joining is not simply giving in. It is rather a process of, from a balanced position, moving to align with the 'attacking' energy so that it is possible to begin to change the direction of that energy. A good analogy is to think of a rocket in flight. If you want to change the direction of the rocket, would your choice be to stand in front of it and try to smash it onto a new course, or would you prefer to fly alongside it and gently nudge it to the desired new direction?



Consider now what the principal *might* have said in the last example:

Mother (assertively, bordering on the aggressive): My child is going to need a full time aide. She has ADD and can't focus without 1:1 help, and she also needs the help because other kids pick on her constantly.
Principal: You're feeling like your daughter is going to need lots of specialized help, both for her academics and in her social skills.
Mother: Right, and she needs that help on a daily basis. I don't want her experiencing failure.
Principal: So our goal is to provide a program for your daughter that will help her get along with others and be successful academically?
Mother: Yes, those are things that are essential for her and that she has struggled every school year with.
Principal: Perhaps we can take a look at your daughter's day and see when the main instructional periods are, and when the main times of social interaction are. It may be that kids will treat her more normally if she has several people teaming up to help her at various times, rather than one person who sticks with her all day like a baby-sitter.
Mother: I'd be willing to take a look at that and see how it might work.

Psychological Effects of Joining

When we *join,* there are profound effects both on ourselves and on the other party. If we are successful, we get back an increased appreciation of where they are coming from; we understand their point of view, even if we hold different views ourselves. We also can better understand what will work in order to persuade the others to come to agreement.

From the point of view of the other party, our actions may be even more profound. They begin to feel that they are understood and more importantly that perhaps we are a bit more like them. As people come to feel that they are more like each other, it becomes more difficult to attack, because it becomes like attacking oneself. Resistance and argumentativeness depend upon separateness. There must be a *you* and a *me*. The more *you* are like *me*, the more *you* understand *me*, the more *I* become hard to single out as an *other* and therefore hard to attack. There becomes no one on whom to focus aggression, and the door is opened for cooperation.

"We do not want to merge or get lost in another person's energy. We want to be able to become like the other person, see the world from his or her point of view, while we retain our sense of self and our own sense of center."
--Wendy Palmer

Our goal through joining is to 'walk a mile in their shoes' and perhaps even 'think like they do'. When we can do this, solutions that will work for both us *and* them appear as possibilities in our minds, whereas before we could only see our own needs.

Joining Strategies

The overall goal of all joining strategies is to help another to feel understood and listened to, and for us to truly understand another's wants and needs.

A List of Joining Strategies:

1. Listen intently and actively.
2. Acknowledge the strength of their position.
3. Acknowledge the validity of their feelings.
4. Use nonverbals and paraverbals to create a lessening of separation.
5. Acknowledge them as a person (authority, generosity, competence etc.).
6. Apologize if it is appropriate to do so.
7. Use humor.
8. Change the timing or take a break.
9. Use *Yes.....and,* rather than *yes...but.*
10. Ask questions that elicit a *yes* response.
11. Make a 'language change' from *you* to *us.*

Listen intently and actively

This is a fundamentally important skill, as we have indicated in section four. Someone once said that the only reason most people ever listen is because they have to wait until it is their turn to talk. We must do far better than that. Good listening enables us to truly understand the other, as well as send them a clear message that we understand. Separation is lessened and joining occurs.

Teacher: I'm so discouraged. People don't even say hello to each other in the hall anymore when we pass each other. It's as if the school year gets darker and more depressing the longer it goes on, and no one has the energy to do anything about it.
Principal: Wow, it sounds like things are feeling pretty bad to you right now. It seems like you're experiencing a lack of friendliness in even the most common interactions, and no one has the energy to change. What do you think can be done?

Acknowledge the strength of their position

Everyone wants to be right, strong, and powerful, just as everyone wants to be heard. Instead of looking for holes and weaknesses in the other's position, look for their strengths and acknowledge those...we'll have to deal with the strong aspects of their point of view eventually, anyway.

Parent: I know my rights!
Special Education Teacher: You have some powerful laws going for you which give you substantial rights, and ultimately give rights to your children, too!

Acknowledge the strength of their emotion

Many times it's not enough to acknowledge or comment in a dispassionate way. People can be passionate about what they believe and if we ignore those passions we risk appearing aloof and not truly understanding or sympathetic. Imagine if a teacher storms up to you and says, 'I've absolutely had it with Jimmy. I can't stand to have him in my class one more day!" Trying to explain Jimmy's good points at this juncture may only make the teacher angrier. Her feelings first need to be validated.

Use nonverbals and paraverbals to create a lessening of separation

We've already learned that much more occurs in communication than just words. Oftentimes, we can observe good friends in conversation and notice that they have become like one another; each has an elbow resting on the table, the crossed legs mirror one another; their posture and their tone of voice are similar. We can help others accept us more by paying attention to and gently (not clumsily or obviously) matching nonverbals and paraverbals.

Acknowledge them as a person

Sometimes there are opportunities to acknowledge a person outside of the topics of discussion. "You got some great hits in the softball game last night" may not be related to the child's IEP, but it may go along way in building a willingness to cooperate.

Apologize if it is appropriate to do so

We have noticed that it is relatively rare for someone to sincerely apologize. It takes strength of character and a solid ego to admit wrong. For those of us interested in joining, all the better to apologize when it is appropriate. A well worded apology sends a powerful message to others that we hear their concerns and are responsive to them.

Sometimes, we really did nothing wrong but the whole situation is a disaster. An apology about the lousy way things are going sometimes is very effective.

Parent: I can't believe that my daughter still has four credits to earn before she can graduate. The printouts we've gotten from the school for the last six months have said she has only two credits to go!
Administrator: I'm really sorry this happened. It must be incredibly frustrating to think you are two credits away from graduation and then find out the amount is actually doubled! I'm the one who is ultimately responsible for not catching this sooner. I can't change the state's credit law, but maybe there is something we can figure out which can help soften the blow of all this.

Use humor

If you can find something that everyone can laugh at, let it fly! Laughter brings people together, reduces stress, lightens the mood, and a one minute belly laugh is the equivalent of 25 sit-ups! Of course, humor which only one side finds funny or which puts down others is best avoided.

> ***"Use yourself as the object of your humor and you'll seldom have to worry about offending any group or becoming politically incorrect!"***
> ***–LeighAnne Jasheway, humorist***

Change the timing or take a break

Careful observation can let us know when people are getting squirmy, which indicates discomfort. If we're aware of those nonverbal communication 'signals' and can respond to them, we can help others feel that we know them and care about their needs.

Use "yes, and" rather than "yes, but".

We're always amazed at how predictable people can be when someone says something they disagree with. 99% of the time, the first two words out of their mouths will be "Yes, but..." It's an automatic script almost everyone seems to have. We can powerfully change this script by replacing the 'but' with 'and'. This simple change *acknowledges* another's point, even while making room for our own.

Teacher: Portfolios are a waste of time for special education students! They will never earn a Certificate of Mastery!
Principal: Yes, and I believe that even if they don't, the organizational skills they gain may be of value to them in the future.

Ask questions to elicit a 'yes' response.

Every time someone answers in the affirmative, it is a subtle joining with us. Many times there are two ways to begin to discuss an issue: one will elicit a response in the negative, and the other in the positive. For example: "Are you happy with the way the bus schedule works getting Jill to school?" (No!) "Do you think it's important to work out a bus schedule that works for everyone?" (Yes!)

Make a language change from 'you' to 'us'.

Starting a sentence with 'you' has an almost automatic 'finger pointing' quality to it. "You should have...." It creates a duality, a separation between people. The more sentences can start with 'us' or 'we', the more we are using the language of cooperation and togetherness. (We have utilized this principle in our language choices throughout this training manual.)

Refocus the Discussion or Reframe the Issues

Sometimes during negotiation or conflict resolution the focus can become lost or diffused. This is sometimes referred to as "getting on the cross-town bus". We've inadvertently hopped on a bus that is taking us way across town, out of the direction of our intended destination. There are specific techniques to use when it is necessary to redirect the process:

Refusing/Reforming Strategies

1. Appropriate summarizing
2. Normalization
3. Generate a hypothesis to explore
4. Move the discussion from the past to the future
5. Perform a relevancy check

Appropriate Summarizing

A verbal summary, emphasizing the important (i.e. 'on track' point) can be a useful tool. However, there is even greater power in *writing down*. What is written down tends to become the focus of discussion, particularly when it is done where everyone can see it. We can write on a flip chart or even on a hand-pad that others can see. By our choice of words and the focus on certain topics or threads, we can go a long ways towards appropriate focusing of a session.

Normalization

People can sometimes get stuck on a point or issue and almost become obsessed with it...it seems big, unique, and unsolvable. For example, a parent whose child is well behind in credits and not at all motivated to go to school becomes stuck on the issue that if her daughter doesn't get a high school diploma, her life will be ruined. In such a situation, there can be a sense of hopelessness and despair, and a perceived narrowing of options. It can be very helpful to say something along the lines of:

"Well, there are at least 45 other kids who are in a very similar situation to your daughter. It might help us to look at what *they* are doing because there sure are a lot of them; it's actually a very common situation that some high schoolers find themselves in at this time every year." The discussion can then be broadened to include alternatives such as a G.E.D., work, enrollment in community college, enrollment in an alternative school, etc.

Generate an Hypothesis to Explore

This is sometimes referred to as the "I wonder" strategy. "I wonder what would happen if...." "I wonder, if we were to ...., then what do you suppose....". The hypothesis we create is designed to help move people in an appropriate problem-solving direction.

Move the Discussion From the Past into the Future

We may have to spend some time discussing the past in order to clear the plate, but it is easy for people to get stuck in blaming or wrangling about events long gone by. It's important to note that if people refuse to move out of the past, they may be needing to deal with unmet, unresolved or unnoticed emotional issues (see the next section).

Perform a Relevancy Check

Sometimes, people are not so much 'off topic' as just getting stuck on a detail or other irrelevant point. In this case, here is a good relevancy check statement: *"I'm wondering, is this discussion helping us to go in the direction we need to be going? If not, perhaps we could.......".*

Deal With Their Emotional Baggage

We know that people won't be ready to resolve a problem until they have had a chance to tell their story. Sometimes, people's emotional investment in an issue is so great that simply telling the story in the beginning is not enough. The emotional issues keep arising, again and again. Attempts to move on are fruitless or are met with passive resistance.

WORRY
FEAR
GUILT

The strategies below are listed in order of energy and time needed to carry them out. A reminder: the wise problem solver uses the 'lightest touch' necessary.

Dealing With Their Emotional Baggage

light touch			***heavy touch***
Teflon technique	Empathy/ normalization	Relevancy check	Stop and process

Teflon Technique

When we use the Teflon technique, we hear the emotional content but we choose to just let it slide off us. We listen well, but don't respond verbally. Perhaps we just acknowledge with a nod. Many times, what we ignore passes. It may very well be that they just needed to get something off their chest.

Empathy/Normalization

People get emotional because they feel something uniquely bad is happening to them. It goes a long way to help people understand that what they are feeling is common and that it happens to lots and lots of people. It also is important to let people know that we understand how they feel.

Relevancy Check

Sometimes people can become emotional without realizing the divisive and damaging effects on a problem solving process. It can sometimes help to interject a dose of rationality in the process in the form of a 'reality check'. This type of reality check differs from a reframing reality check in that we are asking if the *emotion* being expressed is helpful to the process. It takes some skill to utilize this type of reality check without it sounding like an attack or a judgment, but it can be very powerful when done correctly.

"I've been observing that every time he mentions changing the after-school arrangements your head goes down, your arms fold, you shake your head 'no'...and then the conversation stops. I'm wondering if you're noticing this at all and whether or not you think it's helping us get where we need to go."

Stop and Process

If we're at this point, we've concluded that there will be no more problem solving done until the emotions being expressed are dealt with further. This situation can occur even though the parties have already been given at least one opportunity to tell their story. It will be necessary to divert from the problem solving structure in order to give a further opportunity to process their feelings about the situation or events that have been emotionally upsetting and are still getting in the way. It's important to stay in control of the structure even as we open up into an honest emotional space. For example we may say, "This is obviously important.

With the other's permission, I'd like to stop brainstorming and hear the 5 minute (10 minute, 1 minute) version of what happened to you, and then we might discuss it for a few more minutes".

It also may help to create closure by writing the core complaints on a flip chart and then giving people the opportunity to read or otherwise give value to them.

Educate and be the Angel of Reality

When we feel that the people we are working with are just not 'getting it' in terms of understanding and dealing with essential facts of a case, it may be time to try to act as an *angel of reality*. Essentially, our next baby step becomes helping people see the situation more clearly. This is done not by berating, putting down or accusing but by educating. When we are sure of our facts, we are doing others a favor by informing them. The question is, how can we best accomplish this?

My mind is made up..don't confuse me with facts!

An *angel of reality* strategy relies on facts and logic to educate. However, many times people are not really open to new information, particularly when they feel we are trying to persuade or convince them of something. If people feel pushed, a force-seeks-force reaction will occur and they will become resistant. Therefore, one of the best ways to be an effective *angel of reality* is to use the Socratic Method: ask questions. *Angel of reality* questions have the desired 'content' embedded within them, or are designed to help bring the listener to the realizations we would like for them to have.

Angel of Reality Questions:

1. Questions to make people think or challenge them:
"What do you suppose would happen if...(insert factual content)?

2. Questions to gather, clarify, or provide information:
"Am I correct in my understanding of this issue, which is..(insert factual content).."

3. Questions which have a 'reality check' quality:
"So if we spent all the money now, what would be the consequences of that?"

4. Questions which include factual content which educates:
"I'm a bit confused here. I see that there is $45,000 available but it must be divided among fourteen programs. What do you think is the most equitable....."

5. Questions which reveal your Best Alternative to a Negotiated Agreement (your *BATNA).*
"I wonder how long a court order would take to obtain?"

6. Questions which cast doubt upon an assumption:
"Did he give you a guarantee that you would win if this goes to a fair hearing?

It's always good to remember that educating can be a two way street. If we are open and listening well, as we have encouraged throughout this training, we may find that others may act as *angels of reality* for *us* as well. *We* very well may end up re-thinking some of *our* positions.

Section 7:

DISPUTE RESOLUTION PROCESSES IN SPECIAL EDUCATION

IN THIS SECTION YOU WILL FIND:

- WHAT HAPPENS IF WE CAN'T AGREE?
    - Mediation
    - Complaint Investigation
    - Due Process Hearing
    - Independent Educational Evaluation
    - Fact Finding
    - Arbitration

DISPUTE RESOLUTION PROCESSES IN SPECIAL EDUCATION

WHAT HAPPENS IF WE CAN'T AGREE?

In this training, we have focused on expanding our toolbox of skills to maximize our abilities to reach effective and satisfying agreements when problems arise. By increasing the problem solving and negotiating capacity of those whom have a stake in the education of a child, we work to reduce the number of situations that require more formal dispute resolution procedures. However, not all problems will be resolved in the early stages. In this section, we give a description of some of the options available to parties who have not been able to resolve disputes to their satisfaction at the early stage of a conflict.

Special education law stipulates three processes for resolving disputes: mediation, complaint investigation, and due process hearing. As with all dispute resolution processes, these differ in their formality and the placement of decision-making power. In mediation, the decision-making power will reside at all times with the parties. In a complaint investigation, or due process hearing, the decision-making power lies with a neutral third party.

Parties should be aware of their rights to consider other ADR options such as independent educational evaluation, fact finding, and arbitration. ADR is a term that refers to a range of techniques for resolving disputes without litigation. In the past, ADR has stood for *Alternative Dispute Resolution*. However, with the enormous growth in the last two decades of a variety of settlement processes and options, a more fitting meaning of ADR has evolved to *Appropriate Dispute Resolution*. As mediator/attorney Jim Melamed states, " . . there is, in fact, nothing alternative at all about ADR today. . . the concept has developed that *the forum should fit the fuss* and not vice versa.
There are no limits to the types of dispute resolution processes that can be utilized. The only key is that the parties (and assisting professionals) understand and agree to the same process."

Mediation

In mediation, a neutral third party, who has no decision-making ability, assists the parties in reaching a negotiated agreement. The reauthorization of IDEA stipulates that each public agency establish and implement procedures that allow parties to resolve disputes through mediation. At a minimum, these processes MUST be available whenever a due process hearing is requested. However, either parents or the school district can request mediation whenever it is felt that an impasse has been reached. Mediation is voluntary and optional. If all parties agree to mediation, the school district can contact the Oregon Department of Education and request that a mediator is assigned to the case or the parties can choose one themselves. Mediation can take place prior to or concurrent with a due process hearing request or a complaint investigation. The mediator writes the agreement, which expresses the ideas of all parties. The parties indicate their willingness to abide by the agreement by signing it.

This process allows for the expression of emotion and improvement in the relational aspects of the dispute. Most cases are settled so that the outcome is usually satisfying to all parties. Mediation is set within 15 calendar days of the Oregon Department of Education's receipt of the agreement to mediate.

Complaint Investigation

In this process, an individual (or an organization) files a written complaint with the Oregon Department of Education. The parties present information in an informal setting to an assigned investigator who determines whether federal or state regulations have been violated. The investigator issues a decision to the parties, which can be appealed to the U.S. Department of Education.

Generally this process is less adversarial than a due process hearing. There is usually no opportunity to address the emotional issues or improve communication or the relationship of the parties. The investigation must be completed within 60 calendar days of receiving the complaint.

Due Process Hearing

A due process hearing is mandatory on written request of either the parents or the school district. This process is the formal legal proceeding for special education disputes and conducted in 'litigation style'. Attorneys present information to a hearing officer who functions as a judge. The emphasis is on identifying breaches of the law and prescribing remedies. The decision by the hearing officer is final except that a losing party can bring a civil action in court within 120 days of the final order.

Generally, this process is adversarial, expensive for both parties, tense, and hard on continuing relationships. The hearings are emotionally draining and the outcome is rarely satisfying to both parties. The hearing must be completed within 45 calendar days with a decision rendered unless the hearing officer agrees to an extension.

Independent Educational Evaluation

Parents may ask for an independent educational evaluation by a qualified examiner who is not an employee of the school district if they disagree with an evaluation completed by the school district. If the school district disagrees with the request, it may request a due process hearing. If the evaluation is conducted, the results must be considered by the school district in any action taken.

Fact Finding

The parties agree on a neutral third party to assist in some other process (negotiation, mediation, and arbitration) by finding facts. The fact-finder may make findings public, with the parties' consent, to increase pressure for reaching an agreement. The fact-finder's recommendations may, by the parties' agreement, be confidential and non-admissible in any subsequent contested hearing.

Arbitration

The parties (or their representatives) present their evidence to a third party decisionmaker whom they have chosen, for a final and binding (win/lose) decision. Arbitrators are usually selected for their expertise in a particular field. The parties determine the range of issues to be addressed as well as the procedural rules that will be followed. The hearing is private. The courts do not usually review decisions because the parties have agreed to be bound by the decision of the arbitrator. Arbitration is generally quicker, simpler, and less costly than adjudication.

Section 8:

RESOURCES & INFORMATION

IN THIS SECTION YOU WILL FIND:

- BIBLIOGRAPHY AND SUGGESTED READING
- COMMON SPECIAL EDUCATION ACRONYMS
- DEFINITIONS

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Section 8:

RESOURCES & INFORMATION

IN THIS SECTION YOU WILL FIND:

- BIBLIOGRAPHY AND SUGGESTED READING
- COMMON SPECIAL EDUCATION ACRONYMS
- DEFINITIONS

COMMON SPECIAL EDUCATION ACRONYMS

(circa 1999)

* **IEP:**	Individual Education Program
* **IWEN:**	Individual with Exceptional Needs
* **CWAD:**	Child with a Disability
* **FAPE:**	Free, Appropriate Public Education
* **SEA:**	State Educational Agency (Oregon Department of Education in Oregon)
* **LEA:**	Local Educational Agency (any district or ESD)
* **ESD:**	Educational Service District
* **IFSP:**	Individual Family Service Plan (used in early intervention)
* **LRE:**	Least Restrictive Environment
* **ADD:**	Attention Deficit Disorder
* **ADHD:**	Attention Deficit Hyperactivity Disorder
* **AT:**	Assistive Technology
* **IDEA:**	Individuals with Disabilities Education Act
* **ESY:**	Extended School Year
* **IEE:**	Independent Educational Evaluation
* **LEP:**	Limited English Proficiency
* **LD**:	Learning Disabled
* **ED:**	Emotionally Disturbed
* **OHI:**	Other Health Impaired
* **TBI:**	Traumatic Brain Injury
* **FBA:**	Functional Behavior Assessment
* **BIP:**	Behavior Intervention Plan
* **SLP:**	Speech Language Pathologist
* **OT:**	Occupational therapist
* **PT:**	Physical Therapist

Special Education Acronyms: The only thing permanent is change.

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Act

As used in this part, Act means the Individuals with Disabilities Education Act (IDEA), as amended.

Assistive technology device.

As used in this part, Assistive technology device means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability.

Assistive technology service.

As used in this part, Assistive technology service means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device.

The term includes—

(a) The evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment;

(b) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities;

(c) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;

(d) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

(e) Training or technical assistance for a child with a disability or, if appropriate, that child's family; and

(f) Training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of that child.

Child with a disability.

(a) General.

(1) As used in this part, the term child with a disability means a child evaluated in accordance with §§300.530-300.536 as having mental retardation, a hearing impairment including deafness, a speech or language impairment, a visual impairment including blindness, serious emotional disturbance (hereafter referred to as emotional disturbance), an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities, and who, by reason thereof, needs special education and related services.

(2)

(i) Subject to paragraph (a)(2)(ii) of this section, if it is determined, through an appropriate evaluation under §§300.530-300.536, that a child has one of the disabilities identified in paragraph (a)(1) of this section, but only needs a related service and not special education, the child is not a child with a disability under this part.

(ii) If, consistent with §300.26(a)(2), the related service required by the child is considered special education rather than a related service under State standards, the child would be determined to be a child with a disability under paragraph (a)(1) of this section.

(b) Children aged 3 through 9 experiencing developmental delays. The term child with a disability for children aged 3 through 9 may, at the discretion of the State and LEA and in accordance with §300.313, include a child—

(1) Who is experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development; and

(2) Who, by reason thereof, needs special education and related services.

(c) Definitions of disability terms. The terms used in this definition are defined as follows:

(1)

(i) Autism means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age 3, that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. The term does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance, as defined in paragraph (b)(4) of this section.

(ii) A child who manifests the characteristics of "autism" after age 3 could be diagnosed as having "autism" if the criteria in paragraph (c)(1)(i) of this section are satisfied.

(2) Deaf-blindness means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for children with deafness or children with blindness.

(3) Deafness means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, that adversely affects a child's educational performance.

(4) Emotional disturbance is defined as follows:

(i) The term means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance:

(A) An inability to learn that cannot be explained by intellectual, sensory, or health factors.

(B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.

(C) Inappropriate types of behavior or feelings under normal circumstances.

(D) A general pervasive mood of unhappiness or depression.

(E) A tendency to develop physical symptoms or fears associated with personal or school problems.

(ii) The term includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance.

(5) Hearing impairment means an impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance but that is not included under the definition of deafness in this section.

(6) Mental retardation means significantly sub-average general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a child's educational performance.

(7) Multiple disabilities means concomitant impairments (such as mental retardation-blindness, mental retardation-orthopedic impairment, etc.), the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. The term does not include deaf-blindness.

(8) Orthopedic impairment means a severe orthopedic impairment that adversely affects a child's educational performance. The term includes impairments caused by congenital anomaly (e.g., clubfoot, absence of some member, etc.), impairments caused by disease (e.g., poliomyelitis, bone tuberculosis, etc.), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures).

(9) Other health impairment means having limited strength, vitality or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that—

> (i) Is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, and sickle cell anemia; and
>
> (ii) Adversely affects a child's educational performance.

(10) Specific learning disability is defined as follows:

(i) General. The term means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

(ii) Disorders not included. The term does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

(11) Speech or language impairment means a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a child's educational performance.

(12) Traumatic brain injury means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. The term applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. The term does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma.

(13) Visual impairment including blindness means an impairment in vision that, even with correction, adversely affects a child's educational performance. The term includes both partial sight and blindness.

Consent.

As used in this part, the term consent has the meaning given that term in §300.500(b)(1).

Day; business day; school day.

As used in this part, the term--

(a) Day means calendar day unless otherwise indicated as business day or school day;

(b) Business day means Monday through Friday, except for Federal and State holidays (unless holidays are specifically included in the designation of business day, as in §300.403(d)(1)(ii)); and

(c)

(1) School day means any day, including a partial day, that children are in attendance at school for instructional purposes.

(2) The term school day has the same meaning for all children in school, including children with and without disabilities.

Educational service agency.

As used in this part, the term educational service agency—

(a) Means a regional public multi-service agency—

(1) Authorized by State law to develop, manage, and provide services or programs to LEAs; and

(2) Recognized as an administrative agency for purposes of the provision of special education and related services provided within public elementary and secondary schools of the State;

(b) Includes any other public institution or agency having administrative control and direction over a public elementary or secondary school; and

(c) Includes entities that meet the definition of intermediate educational unit in section 602(23) of IDEA as in effect prior to June 4, 1997.

Equipment.

As used in this part, the term equipment means—

(a) Machinery, utilities, and built-in equipment and any necessary enclosures or structures to house the machinery, utilities, or equipment; and

(b) All other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture; printed, published and audio- visual instructional materials; telecommunications, sensory, and other technological aids and devices; and books, periodicals, documents, and other related materials.

Evaluation.

As used in this part, the term evaluation has the meaning given that term in §300.500(b)(2).

Free appropriate public education.

As used in this part, the term free appropriate public education or FAPE means special education and related services that—

(a) Are provided at public expense, under public supervision and direction, and without charge;

(b) Meet the standards of the SEA, including the requirements of this part;

(c) Include preschool, elementary school, or secondary school education in the State; and

(d) Are provided in conformity with an individualized education program (IEP) that meets the requirements of §§300.340-300.350.

Include.

As used in this part, the term include means that the items named are not all of the possible items that are covered, whether like or unlike the ones named.

Individualized education program.

As used in this part, the term individualized education program or IEP has the meaning given the term in §300.340(a).

Individualized education program team.

As used in this part, the term individualized education program team or IEP team means a group of individuals described in §300.344 that is responsible for developing, reviewing, or revising an IEP for a child with a disability.

Individualized family service plan.

As used in this part, the term individualized family service plan or IFSP has the meaning given the term in 34 CFR 303.340(b).

Local educational agency.

(a) As used in this part, the term local educational agency means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or for a combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary or secondary schools.

(b) The term includes—

(1) An educational service agency, as defined in §300.10;

(2) Any other public institution or agency having administrative control and direction of a public elementary or secondary school, including a public charter school that is established as an LEA under State law; and

(3) An elementary or secondary school funded by the Bureau of Indian Affairs, and not subject to the jurisdiction of any SEA other than the Bureau of Indian Affairs, but only to the extent that the inclusion makes the school eligible for programs for which specific eligibility is not provided to the school in another provision of law and the school does not have a student population that is smaller than the student population of the LEA receiving assistance under this Act with the smallest student population.

Native language.

(a) As used in this part, the term native language, if used with reference to an individual of limited English proficiency, means the following:

(1) The language normally used by that individual, or, in the case of a child, the language normally used by the parents of the child, except as provided in paragraph (a)(2) of this section.

(2) In all direct contact with a child (including evaluation of the child), the language normally used by the child in the home or learning environment.

(b) For an individual with deafness or blindness, or for an individual with no written language, the mode of communication is that normally used by the individual (such as sign language, Braille, or oral communication).

Parent

(a) General. As used in this part, the term parent means—

(1) A natural or adoptive parent of a child;

(2) A guardian but not the State if the child is a ward of the State;

(3) A person acting in the place of a parent (such as a grandparent or stepparent with whom the child lives, or a person who is legally responsible for the child's welfare); or

(4) A surrogate parent who has been appointed in accordance with §300.515.

(b) Foster parent. Unless State law prohibits a foster parent from acting As a parent, a State may allow a foster parent to act as a parent under Part B of the Act if—

(1) The natural parents' authority to make educational decisions on the child's behalf has been extinguished under State law; and

(2) The foster parent—

(i) Has an ongoing, long-term parental relationship with the child;

(ii) Is willing to make the educational decisions required of parents under the Act; and

(iii) Has no interest that would conflict with the interests of the child.

Personally identifiable

As used in this part, the term personally identifiable has the meaning given that term in §300.500(b)(3).

Public agency.

As used in this part, the term public agency includes the SEA, LEAs, ESAs, public charter schools that are not otherwise included as LEAs or ESAs and are not a school of an LEA or ESA, and any other political subdivisions of the State that are responsible for providing education to children with disabilities.

Qualified personnel.

As used in this part, the term qualified personnel means personnel who have met SEA-approved or SEA-recognized certification, licensing, registration, or other comparable requirements that apply to the area in which the individuals are providing special education or related services.

Related services.

(a) General. As used in this part, the term related services means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech-language pathology and audiology services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. The term also includes school health services, social work services in schools, and parent counseling and training.

(b) Individual terms defined. The terms used in this definition are defined as follows:

(1) Audiology includes—

(i) Identification of children with hearing loss;

(ii) Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing;

(iii) Provision of habilitative activities, such as language habilitation, auditory training, speech reading (lip-reading), hearing evaluation, and speech conservation;

(iv) Creation and administration of programs for prevention of hearing loss;

(v) Counseling and guidance of children, parents, and teachers regarding hearing loss; and

(vi) Determination of children's needs for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.

(2) Counseling services means services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel.

(3) Early identification and assessment of disabilities in children means the implementation of a formal plan for identifying a disability as early as possible in a child's life.

(4) Medical services means services provided by a licensed physician to determine a child's medically related disability that results in the child's need for special education and related services.

(5) Occupational therapy—

(i) Means services provided by a qualified occupational therapist; and

(ii) includes—

(A) Improving, developing or restoring functions impaired or lost through illness, injury, or deprivation;

(B) Improving ability to perform tasks for independent functioning if functions are impaired or lost; and

(C) Preventing, through early intervention, initial or further impairment or loss of function.

(6) Orientation and mobility services—

(i) Means services provided to blind or visually impaired students by qualified personnel to enable those students to attain systematic orientation to and safe movement within their environments in school, home, and community; and

(ii) Includes teaching students the following, as appropriate:

(A) Spatial and environmental concepts and use of information received by the senses (such as sound, temperature and vibrations) to establish, maintain, or regain orientation and line of travel (e.g., using sound at a traffic light to cross the street);

(B) To use the long cane to supplement visual travel skills or as a tool for safely negotiating the environment for students with no available travel vision;

(C) To understand and use remaining vision and distance low vision aids; and

(D) Other concepts, techniques, and tools.

(7) Parent counseling and training means—

(i) Assisting parents in understanding the special needs of their child;

(ii) Providing parents with information about child development; and

(iii) Helping parents to acquire the necessary skills that will allow them to support the implementation of their child's IEP or IFSP.

(8) Physical therapy means services provided by a qualified physical therapist.

(9) Psychological services includes—

(i) Administering psychological and educational tests, and other assessment procedures;

(ii) Interpreting assessment results;

(iii) Obtaining, integrating, and interpreting information about child behavior and conditions relating to learning;

(iv) Consulting with other staff members in planning school programs to meet the special needs of children as indicated by psychological tests, interviews, and behavioral evaluations;

(v) Planning and managing a program of psychological services, including psychological counseling for children and parents; and

(vi) Assisting in developing positive behavioral intervention strategies.

(10) Recreation includes—

(i) Assessment of leisure function;

(ii) Therapeutic recreation services;

(iii) Recreation programs in schools and community agencies; and

(iv) Leisure education.

(11) Rehabilitation counseling services means services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a student with a disability. The term also includes vocational rehabilitation services provided to a student with disabilities by vocational rehabilitation programs funded under the Rehabilitation Act of 1973, as amended.

(12) School health services means services provided by a qualified school nurse or other qualified person.

(13) Social work services in schools includes—

(i) Preparing a social or developmental history on a child with a disability;

(ii) Group and individual counseling with the child and family;

(iii) Working in partnership with parents and others on those problems in a child's living situation (home, school, and community) that affect the child's adjustment in school;

(iv) Mobilizing school and community resources to enable the child to learn as effectively as possible in his or her educational program; and

(v) Assisting in developing positive behavioral intervention strategies.

(14) Speech-language pathology services includes—

(i) Identification of children with speech or language impairments;

(ii) Diagnosis and appraisal of specific speech or language impairments;

(iii) Referral for medical or other professional attention necessary for the habilitation of speech or language impairments; (iv) Provision of speech and language services for the habilitation or prevention of communicative impairments; and

(v) Counseling and guidance of parents, children, and teachers regarding speech and language impairments.

(15) Transportation includes—

(i) Travel to and from school and between schools;

(ii) Travel in and around school buildings; and

(iii) Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a child with a disability.

Secondary school.

As used in this part, the term secondary school means a nonprofit institutional day or residential school that provides secondary education, as determined under State law, except that it does not include any education beyond grade 12.

Special education.

(a) General.

(1) As used in this part, the term special education means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including—

(i) Instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and

(ii) Instruction in physical education.

(2) The term includes each of the following, if it meets the requirements of paragraph (a)(1) of this section:

(i) Speech-language pathology services, or any other related service, if the service is considered special education rather than a related service under State standards;

(ii) Travel training; and

(iii) Vocational education.

(b) Individual terms defined. The terms in this definition are defined as follows:

(1) At no cost means that all specially-designed instruction is provided without charge, but does not preclude incidental fees that are normally charged to nondisabled students or their parents as a part of the regular education program.

(2) Physical education—

(i) Means the development of—

(A) Physical and motor fitness;

(B) Fundamental motor skills and patterns; and

(C) Skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports); and

(ii) Includes special physical education, adapted physical education, movement education, and motor development.

(3) Specially-designed instruction means adapting, as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction—

(i) To address the unique needs of the child that result from the child's disability; and

(ii) To ensure access of the child to the general curriculum, so that he or she can meet the educational standards within the jurisdiction of the public agency that apply to all children.

(4) Travel training means providing instruction, as appropriate, to children with significant cognitive disabilities, and any other children with disabilities who require this instruction, to enable them to—

(i) Develop an awareness of the environment in which they live; and

(ii) Learn the skills necessary to move effectively and safely from place to place within that environment (e.g., in school, in the home, at work, and in the community).

(5) Vocational education means organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career requiring other than a baccalaureate or advanced degree.

State.

As used in this part, the term State means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and each of the outlying areas.

Supplementary aids and services.

As used in this part, the term supplementary aids and services means, aids, services, and other supports that are provided in regular education classes or other education-related settings to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance with §§300.550-300.556.

Transition services.

(a) As used in this part, transition services means a coordinated set of activities for a student with a disability that—

(1) Is designed within an outcome-oriented process, that promotes movement from school to post-school activities, including postsecondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;

(2) Is based on the individual student's needs, taking into account the student's preferences and interests; and

(3) Includes—

(i) Instruction;

(ii) Related services;

(iii) Community experiences;

(iv) The development of employment and other post-school adult living objectives; and

(v) If appropriate, acquisition of daily living skills and functional vocational evaluation.

(b) Transition services for students with disabilities may be special education, if provided as specially designed instruction, or related services, if required to assist a student with a disability to benefit from special education.